S. HRG. 100–842 PT. 1

DEPARTMENTS OF COMMERCE, JUSTICE, STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1989

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

H.R. 4782

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, STATE, THE JUDICIARY, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1989, AND FOR OTHER PURPOSES

PART 1 (Pages 1–755)

DEPARTMENT OF COMMERCE
DEPARTMENT OF JUSTICE
LEGAL SERVICES CORPORATION
NONDEPARTMENTAL WITNESSES
THE JUDICIARY

Printed for the use of the Committee on Appropriations

U.S. GOVERNMENT PRINTING OFFICE
84–910 O WASHINGTON : 1988

S181-47

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

84-910 O - 88 - 1

COMMITTEE ON APPROPRIATIONS

JOHN C. STENNIS, Mississippi, *Chairman*

ROBERT C. BYRD, West Virginia
WILLIAM PROXMIRE, Wisconsin
DANIEL K. INOUYE, Hawaii
ERNEST F. HOLLINGS, South Carolina
LAWTON CHILES, Florida
J. BENNETT JOHNSTON, Louisiana
QUENTIN N. BURDICK, North Dakota
PATRICK J. LEAHY, Vermont
JIM SASSER, Tennessee
DENNIS DECONCINI, Arizona
DALE BUMPERS, Arkansas
FRANK R. LAUTENBERG, New Jersey
TOM HARKIN, Iowa
BARBARA A. MIKULSKI, Maryland
HARRY REID, Nevada

MARK O. HATFIELD, Oregon
TED STEVENS, Alaska
LOWELL P. WEICKER, JR., Connecticut
JAMES A. MCCLURE, Idaho
JAKE GARN, Utah
THAD COCHRAN, Mississippi
ROBERT W. KASTEN, JR., Wisconsin
ALFONSE M. D'AMATO, New York
WARREN RUDMAN, New Hampshire
ARLEN SPECTER, Pennsylvania
PETE V. DOMENICI, New Mexico
CHARLES E. GRASSLEY, Iowa
DON NICKLES, Oklahoma

FRANCIS J. SULLIVAN, *Staff Director*
MARY A. SHIELDS, *Chief Clerk*
J. KEITH KENNEDY, *Minority Staff Director*

SUBCOMMITTEE ON COMMERCE, JUSTICE, STATE, THE JUDICIARY, AND RELATED AGENCIES

ERNEST F. HOLLINGS, South Carolina, *Chairman*

DANIEL K. INOUYE, Hawaii
DALE BUMPERS, Arkansas
LAWTON CHILES, Florida
FRANK R. LAUTENBERG, New Jersey
JIM SASSER, Tennessee
JOHN C. STENNIS, Mississippi (Ex Officio)

WARREN RUDMAN, New Hampshire
TED STEVENS, Alaska
LOWELL P. WEICKER, JR., Connecticut
MARK O. HATFIELD, Oregon
ROBERT W. KASTEN, JR., Wisconsin

Subcommittee Staff

WARREN W. KANE
DOROTHY B. SEDER
TERRY OLSON

JOHN SHANK *(Minority)*
JUDEE KLEPEC

CONTENTS

WEDNESDAY, MARCH 15, 1988

Page

The Judiciary:

Administrative Office of the U.S. Courts 1
Supreme Court of the United States 73

WEDNESDAY, MARCH 23, 1988

Department of Commerce:

National Oceanic and Atmospheric Administration 117

WEDNESDAY, MARCH 30, 1988

Legal Services Corporation 257
Nondepartmental Witnesses 395

WEDNESDAY, APRIL 20, 1988

Department of Justice:

Attorney General 417
Immigration and Naturalization Service 575
Federal Bureau of Investigation 601
Drug Enforcement Administration 711
U.S. Marshals Service 731

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1989

WEDNESDAY, MARCH 15, 1988

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 10:05 a.m. in room S-146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senator Hollings.

THE JUDICIARY

ADMINISTRATIVE OFFICE OF THE U.S. COURTS

STATEMENT OF HON. THOMAS J. MESKILL, JUDGE, U.S. COURT OF APPEALS FOR THE SECOND DISTRICT

ACCOMPANIED BY:
- L. RALPH MECHAM, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS
- DEWEY HEISING, CHIEF OF THE FINANCIAL MANAGEMENT DIVISION

OPENING REMARKS OF SENATOR HOLLINGS

BUDGET REQUEST

Senator HOLLINGS. The subcommittee will come to order.

Today, we open our hearings on the fiscal year 1989 budget requests for the agencies under the jurisdiction of the Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Subcommittee. The budget requests to this subcommittee total $15.4 billion or 10.7 percent more than the amounts appropriated for fiscal year 1988.

As a result of last fall's Summit Agreement on Deficit Reduction, the subcommittee faces severe budgetary constraints that will make it very difficult to provide the funding for many of the increases requested by the various agencies in this bill. The Committee on Appropriations is now working on a 302(b) allocation for 1989 which is based on the current level plus 2 percent.

Our discretion has been considerably reduced and the basic decision has already been made. I have, therefore, changed the format of our 1989 hearings from budget overviews to topical hearings. The hearings scheduled before the subcommittee this spring will focus on major policy concerns impacting several of the individual agencies.

A separate hearing to review the Judiciary budget for 1989 has been scheduled because of the significance of its budget. Specifically, the Judiciary has requested a budget of $1,721,933,000 for 1989. This represents a $392 million, or 30-percent increase over their 1988 level. There is also a $57 million supplemental request for 1988.

INTRODUCTION OF WITNESSES

To present the 1989 budget request for the Judiciary is Hon. Thomas J. Meskill, circuit judge for the Second Circuit; and to represent the Administrative Office is the Director, L. Ralph Mecham; and Dewey Heising, Chief of the Financial Management Division.

Judge, I think it is well that we explain our dilemma. Last December we got into a showdown over Gramm-Rudman-Hollings and said either put up or shut up. You either put the money up or you just cut straight across the board. They didn't do either. They didn't put up and they didn't tax and they didn't get the money; they just finessed the figures and adopted the 1989 budget in December 1987.

When I say "they," it is the Summit Agreement which is the leadership of the House and the leadership of the Senate, both Republican and Democrat, and, of course, the President.

Coming down to your particular request, the budget summit has bound us to a 2-percent agreement, but we have 4-percent inflation. So, a 2-percent increase over last year is, in essence, a 2-percent cut. And you, in turn, are asking for a 30-percent increase.

Knowing that, respectfully, we would be delighted to hear from you, but you might want to pare down that 30 percent to 2 percent, and tell us what is the most important 2 percent of the 30 percent you have requested.

STATEMENT OF JUDGE MESKILL

Judge MESKILL. Senator, having heard that rosy, optimistic forecast, I will still endeavor to plead my cause.

First, I would like to thank you and the committee for giving us the opportunity to present our case. Unfortunately, as you have previously been advised, our Chairman, Judge Arnold, had a death in the family. The funeral of his father was today and, therefore, he couldn't be here.

I am a rather lame substitute, but I will do my best to explain and, hopefully, justify to the extent that I can, congressional action needed to help us meet these needs, recognizing that these are duties that Congress has directed the Judiciary to carry out.

I would also be happy to try to answer any questions concerning the supplemental request, although from your opening statement, I am not sure that that is within our hearing limit.

To the extent that I can't answer questions, I have a reservoir of talent here in Mr. Mecham and Mr. Heising, and also Mr. Bobek who have been furnished to back me up.

Senator HOLLINGS. You may include your statement in its entirety, and you can highlight it, if you wish, or give it in full.

PREPARED STATEMENT OF RICHARD S. ARNOLD

Judge MESKILL. I do have the statement that was prepared by Chairman Arnold and I would like to submit it for the record.

Senator HOLLINGS. Very good it will be included.

Thank you.

[The prepared statement of Judge Arnold follows:]

STATEMENT OF
THE HONORABLE RICHARD S. ARNOLD

ON BEHALF OF THE
BUDGET COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to present to you the budget estimates for the operation of the United States courts of appeals and district courts for fiscal year 1989.

Mr. Chairman, for my first appearance before your Committee, I have asked Judge Thomas J. Meskill of the Second Circuit Court of Appeals, member of the Budget Committee and former member of Congress, and Mr. L. Ralph Mecham, Director of the Administrative Office, to assist me in the presentation. Biographical sketches of Judge Meskill and myself have been provided to your staff. We shall attempt to answer any questions you may have. We will also provide any additional material you may require.

Mr. Chairman, the Judiciary's fiscal year 1988 appropriations request for "Salaries and Expenses" was reduced from \$1,177,503,000 to \$1,081,447,000, a reduction of \$96 million, or 8.2 percent. This reduction is of serious concern, especially true if our supplemental request, described below, does not receive your full support. The kind of across-the-board reductions that we suffered in fiscal year 1986 and again in fiscal year 1988, may diminish the Judiciary's resources to a level below that necessary to insure that this country's machinery for dispensing justice will be available to people when they most need it. We in the Judiciary are most sympathetic with the constraints your Committee faces in allocating limited funding among so many critical needs, including those of the

Judiciary. Recognizing the complexity of your task, I believe it may help us both if I present our requirements in as direct and as informative a manner as possible.

I believe my task before your Committee is to insure that you are fully informed on the funding needs for Judicial operations and on the impact any reductions will have on those operations. Certainly, the Judiciary has experienced significant reductions in its appropriations in the past, but the reductions since the advent of Gramm-Rudman-Hollings in fiscal year 1986 have reduced court personnel, i.e., the deputy clerks for bankruptcy, district, and appeals courts and the probation and pretrial services officers to 94 percent of staffing requirements. For fiscal year 1988, authorized staffing for these offices totals 12,467. This staffing level is 917 positions and $13 million short of required levels to provide normal court services.

In spite of staff shortages, the courts are operating the best they can, but during these last two years necessary functions have been deferred and essential services reduced. For example, many bankruptcy courts and even some probation and pretrial services offices have deferred closing cases to handle the active workload. Bankruptcy court clerks' offices have closed early to complete administrative work so they can accept additional filings the next day. The people of the Judiciary are its most important resource because they keep the courts operating. We have traditionally given our requests for positions the highest priority. Our request for funds to hire additional personnel is based on expected workload. In other words, our statisticians project the workload which the courts may expect two years hence and, based on a work measurement formula, we calculate our requirements. On the whole, our workload projections have been on target or slightly below actual experience. Consequently, if we do not receive the positions

REQUESTED, THE LEVEL OF JUDICIAL SERVICES EXTENDED TO THE BAR AND THE PUBLIC MUST DROP COMMENSURATELY. MOREOVER, WITH SUCH A SIGNIFICANT PORTION OF OUR BUDGET, 61 PERCENT, DEDICATED TO PERSONNEL, ANY OVERALL REDUCTION IN FUNDING MUST BE APPLIED TO PERSONNEL, WHICH HAS A DIRECT IMPACT ON JUDICIAL SERVICES.

AT THE SAME TIME, UNFORTUNATELY, THE JUDICIARY'S WORKLOAD CONTINUES TO GROW. AS MY PREDECESSOR, CHIEF JUDGE CLARK, HAS REPORTED TO YOU ON MANY OCCASIONS, THE JUDICIARY HAS NO CONTROL OVER THE GROWING CASELOAD RESULTING FROM NEW LAWS, VIGOROUS ENFORCEMENT OF SELECTED EXISTING LAWS, AND CHANGING ECONOMIC CONDITIONS. UNTIL THE THREE BRANCHES OF GOVERNMENT TOGETHER ADDRESS THE SOURCES OF THE RAPIDLY INCREASING LEVELS OF LITIGATION AND MANAGE TO EXERCISE SOME CONTROL OVER THE JUDICIAL WORKLOAD, THE JUDICIARY WILL CONTINUE TO EXPERIENCE RISING CASELOADS AND MUST REQUEST LARGER BUDGETS.

FISCAL YEAR 1988 SUPPLEMENTALS

THE JUDICIARY'S SUPPLEMENTAL REQUESTS FOR FISCAL YEAR 1988 ARE DESCRIBED BELOW. THEY ARE BEING TRANSMITTED IN A SEPARATE PACKAGE BY THE OFFICE OF MANAGEMENT AND BUDGET. THE SUPPLEMENTALS INCLUDE MONEY FOR THE RECENT TWO PERCENT PAY INCREASE, THE FEDERAL EMPLOYEES RETIREMENT SYSTEM (FERS), AND HEALTH BENEFITS, AMONG OTHER REQUIREMENTS. UNTIL THEY ARE APPROVED, THE JUDICIARY MUST OPERATE AT THE FISCAL YEAR 1987 STAFFING LEVEL. IN OTHER WORDS, THE JUDICIARY'S CASELOAD CONTINUES TO GROW IN FISCAL YEAR 1988, BUT FUNDING SUPPORTS STAFFING ONLY AT THE LOWER FISCAL YEAR 1987 LEVELS. MOREOVER, THE JUDICIARY'S AUTOMATION INITIATIVE IN THE COURTS HAS ALSO BEEN SLOWED DOWN UNTIL THE SUPPLEMENTAL IS APPROVED.

SALARIES AND EXPENSES

A TOTAL SUPPLEMENTAL APPROPRIATION OF $38,550,000 IS REQUESTED FOR THE APPROPRIATION "SALARIES AND EXPENSES." OF THIS amount, $21,300,000 is for pay costs, the Federal Employees Retirement System (FERS), and health benefits, and $3,250,000 is to make the recently approved salary increases for bankruptcy judges and magistrates effective April 1 instead of October 1. The remaining supplemental request will provide for: (1) 180 additional Probation Service personnel required as a result of the implementation of the new sentencing guidelines; (2) higher postage costs and the higher Federal Telecommunications System charges assessed by the General Services Administration (GSA); and (3) space alterations for new bankruptcy judgeships. These supplementals will insure that the Judiciary will be fully staffed to perform the many essential court functions and handle the growing caseload. A detailed explanation of the above requests follows.

Sentencing Guidelines

The Comprehensive Crime Control Act of 1984 and the Sentencing Reform Act of 1984, Public Law 98-473, have led to major changes in criminal law and procedure. Certain provisions, which became effective for all offenses committed on or after November 1, 1987, substantially changed the nature of, and increased the time required for, the sentencing process. The application of a large number of complex sentencing factors, including a complicated assessment of a defendant's criminal history, requires expanded efforts in investigation and preparation for sentencing. Probation officers, assisted by a special computer program, will apply guideline rules to these factors to calculate a range for custody time, period of supervision, and fine or restitution which will serve as a sentencing guide for courts to follow. Evidentiary hearings will be required to resolve disputed facts essential to guideline sentencing. Attorneys for the parties will submit written memoranda to the court and/or probation officer on the relevant

SENTENCING FACTORS AND OBJECTIONS, AND EVALUATING THESE SUBMISSIONS WILL TAKE A GREAT DEAL OF TIME AND EFFORT.

IMPLEMENTATION OF SENTENCING GUIDELINES IS EXPECTED TO RESULT IN MORE CASES BEING TRIED: (1) THE RANGE PERMITTED FOR PRISON SENTENCES MAY REMOVE SOME OF THE INCENTIVE TO PLEAD GUILTY, AND (2) THE GOVERNMENT MAY BE RELUCTANT TO ENTER INTO PLEA BARGAINS WHICH SIGNIFICANTLY DIMINISH THE PRESUMPTIVE SENTENCE. APPEALS ARE ALSO PROJECTED TO INCREASE SHARPLY. THE SENTENCING GUIDELINES PROVIDE BOTH GOVERNMENT AND DEFENSE COUNSEL THE OPTION TO APPEAL SENTENCES WHICH FALL WITHIN AS WELL AS OUTSIDE THE ESTABLISHED GUIDELINE RANGE.

THE PROPOSED SUPPLEMENTAL INCLUDES $1,100,000 FOR THE COMPENSATION AND BENEFITS OF 112 PROBATION OFFICERS AND 68 PROBATION CLERKS (FOR THREE MONTHS) AND $3,000,000 FOR THE OPERATING EXPENSES OF THESE EMPLOYEES. FOR FISCAL YEAR 1988, WE HOPE TO BE ABLE TO ABSORB THE ANTICIPATED WORKLOAD INCREASE IN THE COURTS OF APPEALS.

POSTAGE AND FEDERAL TELECOMMUNICATIONS SYSTEM

THE PROPOSED PROGRAM SUPPLEMENTAL INCLUDES $2,900,000 FOR INCREASED POSTAGE COSTS AND $3,000,000 FOR THE FEDERAL TELECOMMUNICATIONS SYSTEM CHARGES ASSESSED BY THE GENERAL SERVICES ADMINISTRATION.

(A) POSTAGE - AN INCREASE OF $2,900,000 WAS REQUESTED IN THE FISCAL YEAR 1988 BUDGET FOR ANTICIPATED POSTAGE COSTS, BUT ADDITIONAL FUNDS WERE NOT INCLUDED IN THE 1988 APPROPRIATION FOR THIS PURPOSE. THE NEED FOR THE ADDITIONAL FUNDING IS A RESULT OF INCREASED FILINGS IN THE COURTS AND A CHANGE IN THE DISCOUNT FACTOR ALLOWED BY THE POSTAL SERVICE IN COMPUTING JUDICIARY POSTAGE COSTS.

Based on a projected increase in bankruptcy filings of nearly 15 percent, from 568,430 in 1987 to 650,000 in 1988, an additional $2,000,000 will be required to pay postage for the mailing of creditors' notices. In addition, the current formula for computing the amount to be paid to the Postal Service for postage includes a 10 percent allowance for spoilage in the use of envelopes and mailing labels. It is anticipated that a study of actual spoilage will support the Postal Service request that the spoilage allowance be reduced to three percent. A reduction of seven percent in the spoilage allowance would increase postage requirements by $900,000.

(B) Federal Telecommunications System (FTS) - An additional $3,000,000 will be required to cover increased FTS charges assessed by GSA. FTS costs have risen substantially since fiscal year 1985. Using the latest estimate from GSA for fiscal year 1988, dated July 1987, FTS costs for "Salaries and Expenses" are projected to be $12,800,000. This represents an increase of 34 percent above 1987 costs and is 31 percent ($3,000,000) higher than the amount currently available for 1988.

This increase is partly attributable to general increases in operating costs, the departure of certain customers from the FTS network, and increased usage by the Judiciary. However, the primary reason for the large increase is due to the end of a "rate stabilization" measure instituted by GSA in 1987, under which we were assured that the final billing for that year would not exceed 105 percent of the GSA estimate provided the year before. GSA has advised that "rate

STABILIZATION" WILL NOT BE EXTENDED INTO FISCAL YEAR 1988.

SPACE ALTERATIONS FOR BANKRUPTCY JUDGES

THE PRESIDENT APPROVED PUBLIC LAW 99-554, THE BANKRUPTCY JUDGES, UNITED STATES TRUSTEES AND FAMILY FARMER BANKRUPTCY ACT OF 1986, ON OCTOBER 27, 1986. THIS ACT, AMONG OTHER THINGS, CREATED 52 NEW BANKRUPTCY JUDGESHIPS. IN ORDER TO PROVIDE FACILITIES FOR THESE NEWLY AUTHORIZED JUDGESHIPS, THE SUM OF $4,000,000 IS REQUESTED FOR THE ALTERATIONS TO SPACE WHICH WILL HOUSE BANKRUPTCY JUDGE CHAMBERS, COURTROOMS, AND ADJUNCT FACILITIES, SUCH AS WITNESS AND ATTORNEY CONFERENCE ROOMS. THESE FUNDS ARE REQUIRED SINCE GSA IS ABLE TO PROVIDE FUNDING ONLY FOR TEMPORARY AND INTERIM SPACE FOR THESE NEW BANKRUPTCY JUDGES, SPACE WHICH IS OFTEN VERY INADEQUATE AND CAN BE USED FOR SHORT PERIODS ONLY.

FUNDING WAS APPROPRIATED FOR THE SALARIES AND BENEFITS OF THESE NEW JUDGES AND THEIR STAFFS AND FOR RELATED OPERATION AND MAINTENANCE EXPENSES IN FISCAL YEAR 1987. FUNDING HAS YET TO BE APPROPRIATED, HOWEVER, FOR ALTERATIONS NORMALLY PROVIDED FOR NEWLY ACQUIRED JUDICIARY SPACE. THE FUNDING REQUESTED WOULD ALSO PAY FOR SUCH ITEMS AS WITNESS BOXES, SPECTATOR SEATING, AND THE JUDGE'S BENCH.

DEFENDER SERVICES

A TOTAL SUPPLEMENTAL APPROPRIATION OF $9,900,000 IS REQUESTED UNDER THIS HEADING. THE SUM OF $1,900,000 WILL PROVIDE FOR 19 DEATH PENALTY RESOURCE CENTERS AND $8,000,000 FOR IMPLEMENTATION OF THE SENTENCING GUIDELINES.

THE FEDERAL COURTS ARE FACED WITH POSSIBLY 304 NEW DEATH PENALTY (HABEAS CORPUS) PETITIONS IN 1988 IN ADDITION TO 289 ALREADY IN THE FEDERAL SYSTEM. THESE PETITIONS WILL COME FROM many parts of the United States, which had a death row population of 1,982 as of December 20, 1987. A large percentage of these cases will be "warrant" matters in which the death warrant has been signed and the time of execution set. In the warrant cases, time will be limited and, given the complexities of these cases, the attendant cost of representation will be radically increased.

Because of a shortage of attorneys with the requisite experience in habeas corpus appeals and the lack of individual attorneys and law firms able to sustain such lengthy and expensive actions on a pro bono basis, additional resources must be found. In addition to the raising of fees to attract legal assistance (which has, for example, been done throughout California), Death Penalty Resource Centers are being established to provide the legal assistance and advice needed by individual lawyers and firms to handle such appeals properly. It has been determined that such organizations are eligible to receive grants pursuant to subsection (g)(2)(B)(ii) of the Criminal Justice Act upon their designation as Community Defender organizations by the federal district courts to be served. Such resource centers will also provide assistance at the state court level and, thus, would be cooperative projects receiving funds from state and private sources as well.

Currently, it is estimated that 19 death penalty states will have a sufficient number of federal death penalty habeas corpus cases to justify the establishment and funding of a cooperative resource center/community defender organization. To date, funding requests have been received for the establishment of resource centers to serve four of the 19 states (Georgia, Mississippi, North Carolina, and Tennessee), and groups in several of the remaining 15 states are at various stages of developing proposals for such organizations.

As noted above under the heading "Salaries and Expenses," The Comprehensive Crime Control and Sentencing Reform Acts of 1984 have led to major changes in criminal law and procedure. With the implementation of sentencing guidelines, it is expected that more persons will go to trial, and trials will require more lengthy periods of representation under provisions of the Criminal Justice Act. In addition to more in-court hours due to the increased length of sentencing proceedings, there may be a substantial growth in the number of out-of-court hours. Evidentiary hearings will be required to resolve disputed facts essential to guideline sentencing. Either local rules or the guidelines will require the attorneys for the parties to submit written memoranda on the relevant sentencing factors and objections. Under the circumstances, it is reasonable to expect that a more complicated procedure will be required in sentencing under the guidelines system than ever before. We do not yet have sufficient experience to estimate precisely these additional costs, but they may amount to approximately $6 million in fiscal year 1988 for both defender offices and panel attorneys.

Finally, the option available for both Government and defense to appeal sentences both inside and outside the guidelines is expected to result in a significant increase in appellate litigation. It is anticipated that early constitutional and statutory challenges will produce an increase in fiscal year 1988 equal to one half of the increases projected for fiscal year 1989, or approximately 1,000 cases. This number of cases represents a 25 percent increase in criminal appeals for fiscal year 1988, costing approximately $1,750,000. This explosion of appeals will take place principally during the latter part of fiscal year 1988, we believe, because important questions of validity and interpretation will arise and need to be resolved early in the history of litigation under the new guidelines. Together with an increase of $250,000 projected for transcripts, the 1988 supplemental costs for sentencing guidelines will total $8,000,000.

COURT SECURITY

A supplemental request of $1,697,000 is requested for the "Court Security" appropriation. This request will provide $1,197,000 for the contractual hire of the 92 court security officers which were initially provided for in your Committee's mark-up of our 1988 budget request but could not be funded as a result of the final 1988 budget compromise. The sum of $500,000 is also requested for the acquisition of security systems and equipment to upgrade significantly the level of perimeter and interior security at the Federal courthouse in the District of Columbia. The requirement is unique in that the Federal Court for the District of Columbia has venue for the trials of all offenses committed outside the jurisdiction of any particular state or district. These trials often involve persons charged with the commission of terrorist acts.

BUDGET DECENTRALIZATION

I would like to inform the Committee that at its September 1987 meeting, the Judicial Conference approved a three-year pilot budget decentralization project in five courts (Second Circuit Court of Appeals, New York Southern, Washington Western, California Northern, and Arizona) to commence on October 1, 1987. The project will test the benefits of expanding the role of the courts in the management of local operating budgets. The test will encompass only the execution phase of the budget cycle. The current system for formulating the budget within the Judiciary and its presentation to the Congress will not change.

It is not expected that the pilot project will add to the operating costs of the pilot courts. The additional workload will be absorbed by existing personnel or funds from savings generated by the courts. The fund allocations to the pilot courts are at the same levels as allocations and expenditures planned for the courts not participating in the project.

A contractor has been selected to evaluate the project and will begin working this spring. We will share the results of this evaluation with the Committee at the conclusion of the project.

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

FISCAL YEAR 1989 REQUEST

Our budget requests for fiscal year 1989 represent the minimum increases consistent with the growing workload of the courts. The budget requirements for the courts of appeals and district courts total $1,626,808,000, $325.2 million and 1,620 positions over fiscal year 1988, adjusted to include the proposed program supplemental and future reprogramming requests. This represents an increase of 25 percent over the 1988 figure. This increase appears greater than it actually is because of the carry-over of $35 million to fiscal year 1988. Adjustments to base, i.e., the increased cost of travel, telephone rates, space rental, printing, supplies, lawbooks, and furniture and furnishings, account for $216,770,000, or two-thirds of our requested increase. Workload increases and the cost of improvements in services account for $108,403,000, or one-third of the requested increase. The additional 1,620 positions included in the request represent an increase of 7.7 percent over the positions approved in fiscal year 1988.

INCREASED CASELOAD

Increases in the Judiciary caseloads are shown on the six-year table at Attachment 1. Cases appealed increased by 31 percent (8,355 cases) in six years from 1981 to 1987. Appeals now total 35,511 annually. I see no signs, Mr. Chairman, that this steady increase in work will abate. In fact, because of the new sentencing guidelines, we expect that the increase in

CRIMINAL APPEALS IN 1989 WILL DOUBLE THE INCREASES OF 1988.

THE COMBINED TOTAL OF CIVIL AND CRIMINAL CASE FILINGS IN DISTRICT COURTS INCREASED FROM 216,906 CASES IN FISCAL YEAR 1981 TO 278,713 CASES IN FISCAL 1987. THIS IS A 29 PERCENT GROWTH IN SIX YEARS, A SIGNIFICANT INCREASE BY ANY STANDARD OF MEASUREMENT. THE CASELOAD GROWTH FIGURE REPORTED THROUGH FISCAL YEAR 1987 WILL NOT ONLY CONTINUE THROUGH FISCAL YEARS 1988 AND 1989 BUT WILL BE FURTHER AUGMENTED BY ADDITIONAL WORKLOAD RESULTING DIRECTLY FROM IMPLEMENTATION OF THE SENTENCING GUIDELINES.

THE GREATEST WAVE OF BANKRUPTCIES IN THE HISTORY OF OUR COUNTRY CONTINUES TO INUNDATE THE FEDERAL JUDICIARY. BETWEEN 1981 AND 1987, BANKRUPTCY FILINGS GREW BY 205,430 CASES, AN INCREASE OF 57 PERCENT. DESPITE AN INCREASE OF 90 PERCENT IN TERMINATIONS DURING THAT SAME PERIOD, THE BACKLOG OF PENDING CASES INCREASED 68 PERCENT, OR 328,203 CASES.

UNITED STATES MAGISTRATES HAVE GREATLY INCREASED THE NUMBER OF CASES HANDLED OVER THE SIX-YEAR PERIOD FROM JUNE 1981 TO THE YEAR ENDED JUNE 1987. THEIR CRIMINAL TRIAL JURISDICTION CASES GREW THE LEAST OVER THAT PERIOD FOR A TOTAL OF ONLY 836. CIVIL TRIAL JURISDICTION CASES GREW BY THE LARGEST PERCENTAGE, 157 PERCENT, WHICH REPRESENTS AN INCREASE OF 3,037 CASES. PRELIMINARY FELONY PROCEEDINGS MOVED UP 45 PERCENT, FOR AN INCREASE OF 41,732 CASES. HOWEVER, CASES GROUPED IN THE CATEGORY "OTHER CRIMINAL AND CIVIL MATTERS" JUMPED 89 PERCENT, FOR A GAIN OF 108,457 CASES. NOTHING BETTER REPRESENTS THE VALUE OF THE SERVICE RENDERED BY OUR MAGISTRATES THAN THESE FIGURES. WITHOUT MAGISTRATES MANY DISTRICTS COULD NOT MANAGE THEIR CASELOAD, UNLESS THE NUMBER OF ARTICLE III JUDGES WERE GREATLY INCREASED. THESE FIGURES ARE ALSO PRESENTED IN THE TABLE AT ATTACHMENT 1.

THE PROBATION SERVICE HAS EXPERIENCED A GROWTH OF 10,096 PERSONS RECEIVED FOR SUPERVISION SINCE FISCAL 1981, FOR A 37

PERCENT INCREASE. PRESENTENCE INVESTIGATIONS CLIMBED 44 PERCENT, OR 11,811 CASES, IN THE SIX-YEAR TIME SPAN. THESE AND OTHER FIGURES REGARDING THE PROBATION WORKLOAD ARE ALSO SHOWN IN THE TABLE AT ATTACHMENT 1.

PETITIONS FOR NATURALIZATION INCREASED 53 PERCENT SINCE JUNE 1981, AND THE NUMBER OF ALIENS NATURALIZED ROSE 100,923 (A 63 PERCENT INCREASE). MANY MORE NATURALIZATION MATTERS WILL COME BEFORE THE COURTS DURING THE NEXT FEW YEARS AS A RESULT OF THE AMNESTY PROVISIONS OF THE NEW IMMIGRATION LEGISLATION.

DETAILS OF APPROPRIATIONS REQUESTED FOR FISCAL YEAR 1989

OUR REQUEST OF $1,626,808,000 FOR FISCAL YEAR 1989 REPRESENTS AN INCREASE OF $325,173,000 OVER THE AMOUNTS APPROVED FOR FISCAL YEAR 1988. IT ASSUMES THE SUPPLEMENTAL REQUIRED FOR 1988 WILL BE GRANTED. THIS INCREASE CONSISTS OF $216,770,000 FOR ADJUSTMENTS TO BASE AND $108,403,000 FOR WORKLOAD INCREASES AND IMPROVEMENTS IN SERVICES. THESE REQUIREMENTS CONSIST OF 1,620 POSITIONS: 11 FOR THE MAGISTRATE SYSTEM, 13 FOR CIRCUIT EXECUTIVES AND CENTRAL LEGAL STAFFS, 883 DEPUTY CLERKS FOR THE COURTS OF APPEALS, DISTRICT COURTS, AND BANKRUPTCY COURTS, 199 FOR PROBATION AND PRETRIAL SERVICES, 40 FOR THE NATIONAL COURT LIBRARY SYSTEM, 87 FOR THE ELECTRONIC COURT RECORDING PROGRAM, 335 ASSOCIATED WITH IMPLEMENTATION OF THE SENTENCING GUIDELINES (82 FEDERAL PUBLIC DEFENDERS AND 253 PROBATION SERVICE PERSONNEL), 12 FOR THE FEDERAL PUBLIC DEFENDER OFFICES, 5 POSITIONS FOR COURT SECURITY, AND 35 POSITIONS TO COVER THE ANTICIPATED INCREASE IN THE NUMBER OF SENIOR JUDGES. TO REFLECT THE PHASE-IN OF THESE NEW POSITIONS, OUR 1989 REQUEST FOR DEPUTY CLERKS AND PROBATION SERVICE PERSONNEL INCLUDES FUNDING FOR ONLY 60 PERCENT OF THE FULL YEAR COST.

SALARIES AND EXPENSES

MR. CHAIRMAN, OUR REQUEST FOR THE ACTIVITY "SALARIES OF

Judges" within this appropriation is based on judgeship positions, anticipated vacancies in newly created positions, retirements, and the number of judges taking senior status. Our fiscal year 1989 request represents an increase of $6,298,000 over 1988.

We estimate that in fiscal year 1989 there will be an average of 30 Article III judgeship vacancies. In addition, provision has been made for an average net increase of 14 judges in senior and retired status in fiscal year 1989. A total of 102 judges will be eligible to take senior status.

In our request for the activity "Salaries of Supporting Personnel" within this appropriation, we seek funds to pay magistrates, clerks, deputies, probation and pretrial officers, and other support staff. The 1989 request for $715,656,000 is an increase of $120,655,000 over 1988. It includes $74,935,000 for adjustments to the base, and 1,521 additional supporting personnel for the courts of appeals, district courts, and bankruptcy courts. A summary of these additional positions is contained on page 5.43 of our budget justifications.

A total of 883 positions is required just to handle the increased workload in circuit, district, and bankruptcy court clerks' offices. To perform probation and pretrial services, we need 199 additional positions. The request for these added people is based on the application of approved staffing formulas and projected workloads which are further described below.

Deputy Clerks

The vast bulk of the requirement for additional deputy clerks comes as a result of bankruptcy filings, which are expected to increase 19 percent in fiscal year 1989 over 1988, primarily because of sustained high interest rates and continued increases in private (non-business) borrowing. Of the total of

883 positions we are requesting, Mr. Chairman, 690 are for the bankruptcy courts. Thus, bankruptcy needs 78 percent of the new positions we are requesting.

We are requesting an additional 20 deputy clerks for the courts of appeals and 173 for the district courts. In terms of percentages, the district courts will receive 20 percent of the positions and the courts of appeals will receive 2 percent. The 20 positions for courts of appeals clerks' offices are based on the projected growth in filings, from 35,511 in 1987 to 38,500 in 1988 and 40,000 in 1989. These increased filings reflect the expected impact of the new sentencing guidelines upon criminal appeals, which will be absorbed in 1988. The ratio approved by the Judicial Conference and used as a guideline since 1973 is a ratio of 75 appellate filings per deputy clerk. The increase in positions in district courts is primarily in civil cases, which, excluding Social Security and recovery-of-overpayments cases, are increasing again after having leveled off in 1986 and 1987. Further, the Social Security and recovery-of-overpayments categories are expected to increase in fiscal year 1989.

Probation Service

Our request includes 199 additional probation and pretrial service positions: 125 officers and 74 clerks. Persons under supervision increased by 30 percent between fiscal years 1981 and 1987, and they are expected to increase another six percent by fiscal year 1989. This rate of increase is actually less than what was previously expected, because the new Federal sentencing guidelines will likely reduce the number of probationers coming into the system. On the other hand, the pre- and post-sentence reports will take longer to prepare under the new guidelines, for which we have already requested positions separately (See page 5).

Magistrates

Two new full-time magistrates will be needed. Of these, one will be established by the conversion of a part-time position and one will be a newly created full-time magistrate. There are a total of 11 positions included in this request. Six positions will go to law clerks, secretaries, and clerical assistants established as support personnel for the new magistrates. The Conference has taken a deliberately conservative position in authorizing the creation of new magistrates and has limited such authorizations to those courts in which the workload and other factors create a compelling need for additional resources. The successful use of magistrates to relieve caseload pressures has been recognized and is continuing to expand throughout the country.

National Court Library System

The expansion of the National Court Library System continues, consistent with the recommendations of your Committee. In fiscal year 1989, the National Court Library System will have completed eight years of operation. We expect to complete the staffing of this system by 1991 with nearly equal increments of personnel each year. The aims of this program are to improve the level of service to judges and minimize increases required for library accession and continuation material through professional management of the system. The request of 40 positions for 1989 will bring the staffing back in line with the original program by making up the losses incurred in a previous appropriations bill.

Our request for fiscal year 1989 for the activity "Expenses of Operation and Maintenance of the Courts" includes under new program initiatives $43.2 million for expansion of automated systems in the courts of appeals, district courts, and bankruptcy

COURTS, AND $750,000 FOR THE UPDATING OF COURT OPERATIONS STANDARDS.

MR. CHAIRMAN, OUR AUTOMATED SYSTEMS ARE ENJOYING MUCH SUCCESS, BUT ARE STILL BEING DEVELOPED AND INSTALLED. OUR NEWLY INSTALLED AUTOMATED DOCKETING SYSTEMS ARE ALREADY PRODUCING EXCELLENT RESULTS. ELECTRONIC DOCKETING HAS PROVIDED JUDGES AND OTHER COURT PERSONNEL WITH THE TOOLS TO MEET THE DEMANDS OF THE PUBLIC AND THE BAR IN AN INCREASINGLY AUTOMATED SOCIETY. COURTS, WHEN PROVIDED WITH PROPER MACHINERY, CAN WITH ASSURANCE TRACK ALL THEIR CASES AS EACH MONTH THEY RECEIVE A PRINT-OUT OF EACH CASE ASSIGNED TO THEM AND ALL THE ACTION DATES FOR THAT CASE. EFFICIENT CASE MANAGEMENT IS NO LONGER A GOAL BUT A PROVEN REALITY. THE NEED AND DESIRE FOR THIS EQUIPMENT IS EVEN GREATER THAN WHEN CONGRESS APPROVED THE INITIAL FUNDS FOR THE PILOTING OF AUTOMATION.

WE ASK THAT YOU AND THE MEMBERS OF YOUR COMMITTEE CONSIDER THIS REQUEST WITH FULL APPRECIATION THAT THE JUDICIARY MUST MODERNIZE THE WAY IN WHICH IT DOES BUSINESS IF IT IS TO COPE WITH FUTURE CASELOADS. OF THE $43.2 MILLION REQUESTED FOR AUTOMATED SYSTEMS, $6 MILLION IS FOR DATA PROCESSING. AS OUTLINED IN THE FIVE-YEAR PLAN FOR AUTOMATION IN THE UNITED STATES COURTS, THE JUDICIARY IS SEEKING TO MODERNIZE THE WAY IT DOES ITS BUSINESS THROUGH AUTOMATED SUPPORT IN ELECTRONIC DOCKETING, NOTICING, INDEXING, ADMINISTRATIVE SUPPORT, AND CASE, JURY, AND FINANCIAL MANAGEMENT. THIS INVOLVES PHASING OUT THE CENTRALIZED COURTRAN SYSTEMS NOW BEING OPERATED ON LARGE, OBSOLETE (AND EXPENSIVE TO MAINTAIN) MAINFRAME COMPUTERS IN WASHINGTON AND REPLACING THEM WITH SMALL, POWERFUL, REASONABLY PRICED COMPUTERS IN THE COURTS UNDER THE DIRECT CONTROL OF THOSE WHO NEED THEM. THE INCREASE REQUESTED FOR 1989 WILL ENABLE PROGRESS TO CONTINUE ON CIRCUIT, DISTRICT, AND BANKRUPTCY COURT AUTOMATION PROJECTS, INCLUDING NEW EFFORTS IN THE PROBATION OFFICES AND CIRCUIT LIBRARIES.

THE REMAINING INCREASE OF $37.2 MILLION IS FOR OFFICE

AUTOMATION. OUR NEW JUDGES COME TO US FROM LAW OFFICES, GOVERNMENT AGENCIES, AND LARGE CORPORATIONS WHICH HAVE UTILIZED OFFICE AUTOMATION FOR OVER TEN YEARS. THEY CONTINUALLY ASK HOW A COURT SYSTEM CAN RENDER PROPER SERVICE WHEN ALL THE PARTIES USING THE SYSTEM ARE FULLY AUTOMATED EXCEPT THE JUDGES. AS OUR CIVIL AND CRIMINAL CASELOADS BECOME INCREASINGLY COMPLEX, THE NEED FOR OFFICE AUTOMATION BECOMES CRITICAL. MULTI-COUNT, MULTI-DEFENDANT, COMPLEX CRIMINAL CONSPIRACY CASES, RICO CLAIMS, MASSIVE TORT LITIGATION (E.G., ASBESTOS, IUD) AND EVER-EXPANDING ENVIRONMENTAL ACTIONS ARE ONLY A FEW EXAMPLES OF THE CASES DESPERATELY IN NEED OF OFFICE AUTOMATION. IN AN EFFORT TO PROVIDE THE JUDICIARY WITH CAPABILITIES ON A PAR WITH OTHER GOVERNMENT AGENCIES AND PRIVATE LAW FIRMS, THE JUDICIAL CONFERENCE HAS ACCELERATED THE PLANNED INSTALLATION OF THESE SYSTEMS OVER A SPAN OF THREE YEARS, VERSUS FIVE YEARS AS CONTEMPLATED EARLIER. THE PURPOSE OF THIS PROGRAM IS TO PROVIDE PROVEN COST EFFECTIVE OFFICE AUTOMATION EQUIPMENT, INCLUDING WORD PROCESSING AND ELECTRONIC MAIL, TO ALL PERSONNEL WITHIN JUDGES' AND MAGISTRATES' CHAMBERS AND TO THOSE SUPPORT OFFICES ENGAGED IN WORK ACTIVITIES NOT ADDRESSED BY THE VARIOUS DATA PROCESSING PROJECTS. OVER THE COURSE OF THREE YEARS, IT IS NOW ANTICIPATED THAT ROUGHLY 8,700 UNITS WOULD BE INSTALLED FOR 17,500 JUDICIARY PERSONNEL. A TOTAL OF 700 SYSTEMS COULD BE FUNDED IN 1988, 4,000 WOULD BE ADDED IN 1989, AND ANOTHER 4,000 IN 1990. THE DETAILS OF OUR AUTOMATION REQUEST CAN BE FOUND ON PAGES 5.44 THROUGH 5.47 OF OUR BUDGET JUSTIFICATION.

THE SUM OF $750,000 IS REQUESTED UNDER THE ITEM "STANDARDS FOR COURT OPERATIONS." THIS AMOUNT IS NEEDED TO ENABLE THE COURTS TO CONTRACT FOR (1) METHODS AND PROCEDURES ANALYSES IN CLERKS' OFFICES AND PROBATION/PRETRIAL SERVICES OFFICES, AND (2) WORK MEASUREMENT STUDIES IN THESE OFFICES. OVER THE PAST SEVERAL YEARS, WORK MEASUREMENT STUDIES HAVE BEEN USED IN THE COURTS TO DETERMINE AND JUSTIFY STAFFING REQUIREMENTS. SINCE THE

RESOURCES AVAILABLE WITHIN THE ADMINISTRATIVE OFFICE TO PERFORM THIS TYPE OF WORK ARE EXTREMELY LIMITED, THE ONLY WAY TO ADEQUATELY SUPPORT THIS FUNCTION IS THROUGH THE USE OF CONTRACT SERVICES.

THE BUDGET ESTIMATE FOR THE ACTIVITY "SPACE AND FACILITIES" INCLUDES AN INCREASE OF $21,584,000 FOR TENANT ALTERATIONS OF FACILITIES AND $17,695,000 TO BE TRANSFERRED TO GSA FOR INCREASES IN SPACE RENTAL COSTS AND RELATED SERVICES, AND FOR ACQUISITION OF NEW SPACE. MR. CHAIRMAN, I WISH TO STRESS THAT THE LACK OF ADEQUATE SPACE FOR THE JUDICIARY IS OF GREAT CONCERN. OUR REQUEST IS QUITE MODEST, COMPARED TO THE UNFILLED NEEDS. TO UTILIZE BETTER THE FUNDING THAT IS AVAILABLE, THE NEWLY CREATED COMMITTEE ON SPACE AND FACILITIES OF THE JUDICIAL CONFERENCE HAS DIRECTED THE ADMINISTRATIVE OFFICE TO BEGIN A REVIEW OF THE STANDARDS USED TO SUPPLY JUDICIAL SPACE. ADEQUATE AND ENFORCED STANDARDS ARE CRITICAL TO A SENSIBLE AND EFFECTIVE SPACE PROGRAM, AND THIS IS OUR GOAL. REVISED GUIDELINES WILL RESULT IN IMPROVED CONTROL BY THE JUDICIARY OVER THE USE OF JUDICIARY SPACE.

DEFENDER SERVICES

OUR REQUEST FOR FISCAL YEAR 1989 IN THIS APPROPRIATION REPRESENTS AN INCREASE OF $41,862,000 OVER THE 1988 APPROPRIATION, AS ADJUSTED BY EXPECTED SUPPLEMENTALS. THIS "NO YEAR" APPROPRIATION IS SUBJECT TO LITTLE CONTROL SINCE OUR REQUIREMENTS ARE BASED ON THE NUMBER OF PERSONS WHO MUST BE REPRESENTED UNDER THE CRIMINAL JUSTICE ACT. REPRESENTATION UNDER THE ACT CONTINUES TO INCREASE, DUE TO FEDERAL DEATH PENALTY (HABEAS CORPUS) CASES AND IMPLEMENTATION OF THE SENTENCING GUIDELINES. IT IS EXPECTED THAT THE INCREASED COSTS FORECAST FOR THESE PURPOSES IN THE SUPPLEMENTAL FOR FISCAL YEAR 1988 WILL CONTINUE TO RISE AT AN INCREASING RATE IN FISCAL YEAR 1989, IN ADDITION TO AN APPROXIMATE FOUR PERCENT INCREASE IN NUMBER OF CASES. THE SIZE OF THIS INCREASE IS ALSO DECEPTIVE IN THAT $9.5

MILLION WAS CARRIED OVER IN THIS APPROPRIATION FROM FISCAL YEAR 1987 TO FISCAL YEAR 1988, REQUIRING THAT THAT AMOUNT BE REPLACED IN THE BASE APPROPRIATION.

FEES OF JURORS AND COMMISSIONERS

WE ARE REQUESTING $46,500,000 IN BUDGET AUTHORITY FOR FISCAL YEAR 1989 TO COVER THE FEES OF JURORS AND COMMISSIONERS. THE TOTAL AVAILABLE JURORS ARE EXPECTED TO INCREASE BY 1.4 PERCENT IN 1989. AT THE SAME TIME THE "FIRST DAY" JUROR UTILIZATION RATE IMPROVED IN 1987 OVER 1986 WITH THE INDEX OF UNUTILIZED JURORS DROPPING FROM 34.0 TO 32.1 PERCENT. THE GOAL OF THE JUROR UTILIZATION PROGRAM IS TO LIMIT THE COURTS PERCENTAGE OF JURORS NOT SELECTED TO 30 PERCENT. SUCH COST SAVING MEASURES AND OTHER JURY OPERATIONS OBJECTIVES HAVE BEEN ADDRESSED AT WORKSHOPS ON "JURY UTILIZATION AND MANAGEMENT" WHICH WERE BEGUN ABOUT THREE YEARS AGO. DURING THIS PERIOD OF TIME, 11 SUCH REGIONAL WORKSHOPS ON JURY MANAGEMENT HAVE BEEN HELD FOR JUDGES AND OTHER COURT OFFICERS.

MR. CHAIRMAN, I MUST EMPHASIZE THE NEED TO HAVE SUFFICIENT FUNDS AVAILABLE AT ALL TIMES TO MEET JUROR EXPENSES. AS YOU KNOW, WE RAN INTO A MOST DIFFICULT SITUATION IN 1986 WHEN THE GRAMM-RUDMAN-HOLLINGS SEQUESTRATION WAS APPLIED TO THIS APPROPRIATION. ONCE AGAIN, I WOULD LIKE TO STATE THAT THE JUDICIAL CONFERENCE IS STRONGLY OPPOSED TO ANY REDUCTIONS TO THIS REQUEST FOR PAY, ALLOWANCES, OR FUNDS FOR OPERATION OF THE JURY SYSTEM. THERE IS A CONSTITUTIONAL RIGHT TO TRIAL BY JURY WHICH WE MUST RESPECT.

COURT SECURITY

IN FISCAL YEAR 1989, A TOTAL OF $56,980,000 IS REQUESTED FOR THE COURT SECURITY APPROPRIATION. THE INCREASE OVER 1988 AMOUNTS TO $14,430,000. BY THE CLOSE OF 1988, WE WILL HAVE 1,206 COURT security officers on duty. The Court Security Committees requested a total of 1,742 court security officers to implement their current security plans. After review by the Marshals Service, these requests were reduced to a total of 1,628, or an additional 422 officers above the number authorized in fiscal year 1988 (including the 1988 supplemental request). These additional security officer positions will be phased in during fiscal year 1989 to: (A) provide coverage to districts that are currently without court security officers and (B) enhance the level of safety of Federal judges and magistrates, employees, jurors, witnesses, spectators, and other trial participants in districts that are staffed with less than the minimum number of court security officers determined to be needed by the districts' Court Security Committees.

CONCLUSION

Thank you, Mr. Chairman, for the opportunity to place the Judiciary's requirements on the record. Unfortunately, our workload is now growing at a rate greater than the overall Government budget increase. As long as this workload increase continues with no apparent constraints in sight, our budget requirements, although they are relatively modest, will continue to grow. I do not pretend to know the solution. I can only present our request in as informative a manner as possible so that you and your Committee are aware of what we need to serve the public.

We shall continue to do our best to do the work Congress gives us to do. We will provide the best service we possibly can to the millions of bankruptcy creditors, we will implement the additional requirements of the Sentencing Guidelines, and we will strive to continue improving our services to the public and the bar. We ask only that you give us the straw with which to make the tale of bricks that is laid upon us.

On behalf of the Budget Committee of the Judicial Conference, we thank this Committee for its considerate responses in the past. We look forward to working with you on our fiscal needs for fiscal year 1989 and pledge a prompt and candid response to any request for additional information.

Attachment 1

COMPARATIVE WORKLOAD DATA
FISCAL YEARS 1981 AND 1987

	F.Y. 1981	F.Y. 1987	% Change
COURTS OF APPEALS:			
Filings	27,156	35,511	+ 31
Terminations	26,010	34,687	+ 33
Pending, End of Year	22,194	26,532	+ 20
DISTRICT COURTS:			
Civil Cases			
Filed	185,626	234,467	+ 26
Terminated	180,833	232,277	+ 28
Pending, End of Year	195,460	246,859	+ 26
Criminal Cases			
Filed	31,280	44,246	+ 42
Terminated	29,705	43,220	+ 46
Pending, End of Year	16,387	26,061	+ 59
Totals			
Filed	216,906	278,713	+ 29
Terminated	210,538	275,497	+ 31
Pending, End of Year	211,847	272,920	+ 29
BANKRUPTCY PETITIONS:			
Filed	363,000	568,430	+ 57
Terminated	269,631	512,978	+ 90
Pending, End of Year	480,709	808,912	+ 68
MAGISTRATES:			
Criminal Trial Jurisdiction Cases	95,152*	95,988*	+ 1
Civil Trial Jurisdiction Cases	1,933*	4,970*	+157
Preliminary Felony Proceedings	92,359*	134,091*	+ 45
Other Criminal and Civil Matters	122,572*	231,029*	+ 89
PROBATION:			
Persons Received for Supervision	27,223	37,319	+ 37
Persons Under Supervision, End of Year	56,430	73,084	+ 30
Pre/Post-Sentence Investigations	26,749	38,560	+ 44
Other Investigations	87,865	104,203	+ 19
Petitions for Naturalization	144,019*	219,693*	+ 53
Aliens Naturalized	159,962*	260,885*	+ 63

*Data for the year ended June 30.

ADDITIONAL PREPARED STATEMENTS

Senator **Hollings**. We also have prepared statements from Judge Markey and Judge Re, as well as from Judge Wilkins on behalf of the Sentencing Commission, and Mr. Godbold on behalf of the Judicial Center, that we will include in the record at this point.

[The statements follow:]

STATEMENT

of

HOWARD T. MARKEY
Chief Judge

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

before

THE SUBCOMMITTEE
COMMITTEE ON APPROPRIATIONS

United States Senate

March 15, 1988

Mr. Chairman, I am pleased to appear for the fifteenth time before the Committee.

Currently the trend in filings indicate an increase of more than 16% over the level experienced in the first years of our existence as a court of appeals. This growth was not expected when I last reported to the Committee, as it was then my expectation that we would return to a constant level after the influx of cases due to the PATCO strike was decided. A source of some concern is that the growth in filings is occurring in the most complex cases on our docket, those from the district courts having now risen almost 25% over our earlier experience.

Fiscal Year 1988 Supplemental Request

Our program supplemental request for 1988 is $570,000. Mr. Chairman, as you know, each fiscal year the court only requests the minimum amount necessary for operations. I estimate that an additional $570,000 will be required this fiscal year as a result of reductions made in our original 1988 budget submission which cannot be absorbed. Absent a grant of our supplemental request the court will be unable to fully staff the chambers of two new judges soon to be confirmed, will seek to reduce payment of rental to GSA, and will suffer further postponement of the new AIMS (Appellate Information Management System).

Fiscal Year 1989 Budget Request

As in the past, the court has prepared a budget limited strictly to need. Mandatory items, over which the court has no control, total $406,000, or 70% of the requested increase. The mandatory increase includes $22,000 to annualize the 2% pay increase effective in January 1988; $33,000 for within-grade salary advancements; $148,000 for four staff positions for two judges eligible to take senior status; $146,000 for equipment and furniture for two judges appointed to replace the two judges eligible to take senior status; $48,000 for travel and miscellaneous services resulting from a 4% inflation factor for services; a 5% increase for travel subsistence in accordance with revised rates established by GSA, an 8% increase in the cost of lawbooks; a 16% increase in postage announced by the Postal Service Board of Governors as taking effect this summer; and a 1% GSA rental increase of $31,000. In recognition of the two less compensable days in Fiscal Year 1989, we have subtracted $22,000.

The amount of the increase subject to the court's control is $169,000. The sum of $51,000 is requested to provide two library positions, ($40,000 for compensation, $6,000 for benefits, and $5,000 for equipment). The addition of these two positions is based on the established judiciary-wide policy that for every 6 judicial officers (defined as judges, senior judges and magistrates) there should be one position in the library. Between our court and the Claims Court, both housed in the National Courts Building and served by our one library, there are 35 judicial officers. Based on this ratio, there should be five positions in the library and there are currently only three.

Because it has become more difficult for the federal judiciary to compete with private law firm salaries in seeking top law school graduates as law clerks, the Judicial Conference has approved a reclassification of law clerk positions removing the current graded salaries. New appointees would be paid at upgraded maximum rates of $25,400, $33,000 and $36,500, depending on their qualifications. The increased cost to the court is $118,000.

I will be glad, Mr. Chairman, to respond to any questions you or any Member of the Subcommittee may have.

STATEMENT OF EDWARD D. RE
Chief Judge
UNITED STATES COURT OF INTERNATIONAL TRADE
before
The Subcommittee of the
Committee on Appropriations
United States Senate

Mr. Chairman, Members of the Committee:

It is a pleasure to appear before you again on behalf of the United States Court of International Trade. As in the past, I am pleased to introduce the Clerk of our Court, Mr. Joseph E. Lombardi, who is here with me.

The appropriation requested for fiscal year 1989 is $8,164,000, which is $46,000 less than the $8,210,000 adjusted amount appropriated for fiscal year 1988.

As reflected in our budget request for fiscal year 1989, the sum of $225,000 has been deducted as a result of the abolition of six vacant permanent positions. This action is consistent with the continuing policy of the Court of abolishing vacant positions which are no longer needed.

Also, the Court, in continuing its policy of relinquishing space which it no longer needed, "turned-back" to GSA, 2,000 additional square feet of space resulting in a savings of $42,000.

The balance of the requested items is as follows:

(1) The annualization of the 1988 supplemental for pay costs requires $20,000.

(2) The cost of within-grade salary advancements requires $27,000.

(3) As a result of two less compensable days in fiscal year 1989, the sum of $22,000 has been deducted.

(4) The cost of increased charges for services, supplies, equipment and lawbook continuations requires $20,000.

(5) As a result of a contract negotiated by the U.S. Marshals Service for Court Security Officers (CSO's), the sum of $25,000 has been deducted.

(6) The cost of increased charges by GSA for local and FTS usage requires $30,000.

(7) The cost of increased charges by the Postal Service requires $2,000.

(8) The cost of replacing one of the three judges eligible to assume senior status and continuing to function with assigned equipment, furniture and library requires $89,000 -- $72,000 will be non-recurring and $17,000 will be recurring.

(9) The cost of reclassifying 18 law clerk positions will require $80,000.

I should like to emphasize to the Committee that the Court will continue to conserve its financial resources by controlling tightly those expenditures over which it has control.

I previously submitted the Court's "General Statement" and "Justification of Changes" which provide detailed description of the line item adjustments. If the Committee requires more information, we will be pleased to submit it, and, obviously to the extent I can, I will answer any questions you may wish to ask.

TESTIMONY OF WILLIAM W. WILKINS, JR., CHAIRMAN
UNITED STATES SENTENCING COMMISSION

INTRODUCTION

Mr. Chairman, members of the Committee, I appreciate this opportunity to again appear before you on behalf of the United States Sentencing Commission. I have with me today the Staff Director for the Commission, Mr. Winston S. (Sid) Moore, and the Commission's General Counsel, Mr. John R. Steer.

At this time last year when I came before this Committee, the Commission was working diligently to finalize an initial set of sentencing guidelines for submission to Congress by April 13, 1987. The Commission will hold a public hearing at the United States Courthouse here in the District for the purpose of considering proposed amendments to the initial guidelines. I say this simply to underscore that much has happened regarding the Sentencing Commission during the past 12 months. The Commission met its deadline for submission of the initial sentencing guidelines to Congress. After a 6-month period of Congressional review, the guidelines became effective November 1, 1987 (for crimes committed on or after that date). Currently, with the advent of guideline sentencing in the federal courts, the Commission is beginning to receive information regarding sentences imposed under the Sentencing Reform Act and the guidelines. Additionally, the Commission is now considering, with a cautious but open mind, a number of possible amendments to the initial guidelines. This, then, is a brief overview of where things stand as Congress prepares to consider the Commission's FY 1989 budget request.

I. SENTENCING COMMISSION PROJECTS DURING FY 87-88

Since the Commission is still a relatively new federal agency, and one with an ongoing mission which continues past the issuance of its major report, the Committee may find useful a summary of the Commission's major activities during the past year. A number of these projects are expected to continue through the current fiscal year and into fiscal year 1989; therefore, they are relevant to consideration of the Commission's FY 1989 budget request.

1. Promulgation of the Initial Sentencing Guidelines.

During the 18-month period following the swearing-in of Commissioners, the Commission held 13 public hearings, published two drafts of guidelines for comment, received and considered in excess of 1,000 written submissions from hundreds of individuals and groups, and submitted the initial sentencing guidelines and policy statements to Congress as scheduled on April 13, 1987. Thereafter, the Commission prepared and submitted to Congress a supplemental report further explaining the guidelines, providing additional rationale for Commission decisions, and summarizing the projected impact of the guidelines on prison population. In that regard, the Commission estimated that the incremental effect of the guidelines on prison population will be a modest 2 to 7 percent, depending on the assumptions made and the time period involved. Should the Committee be interested in additional information regarding the effect of the guidelines on corrections resources, I have appended to my statement an article jointly authored by Commissioner Michael K. Block, who directed our prison impact study, and Dr. William M. Rhodes, the Commission's Research Director, who carried out the study in conjunction with the Bureau of Prisons.

2. Guidelines Training and Education.

Following submission of the guidelines to Congress in April 1987, the Commission focused its energies on training judges, probation officers, prosecutors, and defense attorneys in guideline application. These training and education efforts included field testing sessions, Federal Judicial Center/Sentencing Commission "Train-the-Trainer" seminars, in-district seminars for the courts, and training sessions for U.S. Attorneys, federal defenders, and members of the defense bar.

Commission field testing of the guidelines in 10 cities across the country from June through September served a dual purpose: one, to identify ambiguities and difficulties in applying the guidelines to actual cases; and second, to develop a series of worksheets that probation officers could use as a primary aid in applying the guidelines. The 115 probation officers taking part in the testing sessions represented 44 of the 93 federal judicial districts that are responsible for well over 50 percent of the total federal caseload.

A series of three formal nationwide training sessions, referred to as "Train-the-Trainer" seminars, were co-sponsored by the Commission and the Federal Judicial Center. Approximately 64 federal judges and 140 probation officers attended the intensive 4-day sessions on guideline application held in October 1987 in Washington, D.C., Dallas, and Denver. The judges and probation officers attending the sessions returned to their respective districts as the local "guideline expert" to conduct training sessions in November and December for their districts using materials prepared by the Federal Judicial Center and the Commission.

The Commission also organized and presented a 2-day train-the-trainer seminar in Washington, D.C., for Assistant U.S. Attorneys representing each of the 93 judicial districts across the country. Additionally, Commission members and staff have to date participated in numerous federal defender and private bar guideline training sessions and will continue to provide support to private bar associations and other interested groups when requested to the extent practicable.

3. Revisions to Guidelines Commentary.

Field testing and initial guideline application training exercises revealed a number of useful suggestions for clarifying the Commission's previously-published, official commentary accompanying the guidelines in order to minimize application problems and inconsistencies. In response, the Commission reorganized and expanded the official commentary. In October, the Commission distributed to the court system a new Guidelines Manual containing the guidelines as submitted to Congress, together with the reformatted and revised commentary. This new Manual formed the basis for the further training of probation officers, judges, and others in the guideline application process.

4. Emergency Guideline Amendments.

The Sentencing Act of 1987 provided the Commission with limited, temporary authority to amend previously issued guidelines for reasons determined by the Commission to be urgent and compelling. Under this authority, the Commission issued, effective January 15, 1988, a number of amendments to the guidelines and official commentary. These amendments corrected a number of technical problems in the guidelines and clarified other areas in which application problems had been brought to the Commission's attention. Additionally, the Commission used its new authority to re-promulgate the October revisions in the official commentary, thereby obviating disputes as to whether any of those revisions arguably might have substantively changed the guidelines themselves. The Commission deliberately intended that all of these emergency amendments conform to previously articulated policy decisions, leaving to a later date, and the regular guideline amendment process, the task of making more substantive changes in the guidelines which experience indicates may be necessary or desirable.

5. Technical Assistance Service.

In an effort to complement initial guideline training programs and further assist probation officers and judges with the implementation of the guidelines, the Commission has established and staffed a telephone "hotline." As of mid-March, Commission staff have responded to approximately 400 calls from judges and probation officers concerning questions that have arisen in application of the guidelines. The Commission intends to continue this advisory information service as long as it is appears warranted.

6. Implementation Support Systems.

In conjunction with implementation of the guidelines on November 1, 1987, the Commission's research group has developed an "expert" computer system to help judges, probation officers, and attorneys apply the new guidelines. In addition, a monitoring system is in place to provide feedback to the Commission on how the guidelines and other provisions of the Sentencing Reform legislation are functioning.

The expert system is, in essence, a computerized version of the Commission's guideline worksheets which are being used by probation officers across the country in preparing pre-sentence investigation reports for the sentencing court. By completing all relevant sections of the four worksheets, an officer calculates an individual's guideline sentencing range, fine range, and supervision requirements. The expert system enhances application of the guidelines by making available, at the touch of a button, entire sections of the guideline manual's commentary.

It is anticipated that the expert system will be distributed to every probation office in the nation. The Commission has taken the first step toward implementing the program in the field by purchasing and distributing a personal computer to each of the 93 district probation offices in late 1987 for use with the expert system. Interested judges, prosecutors, and federal public defenders will be provided copies of the expert computer software package on request.

In addition to aiding in applying the guidelines, the expert system will serve several other important functions. Because a detailed computer record of each case will be preserved, judges, probation officers, prosecutors and others will be able to easily track cases and use the information for management analysis and reports. This database, combined with additional information collected under the Commission's guidelines monitoring system, will provide the raw material for Commission research projects mandated under the Sentencing Reform Act.

7. Sentence Monitoring System.

The Commission is charged by statute with the responsibility of monitoring the application of the sentencing guidelines in individual criminal cases. Importantly, the purpose of that function is to obtain information necessary for assessing the effectiveness of the guidelines and the need for changes in them, rather than for the purpose of modifying or correcting any individual sentence (The latter responsibility is one which the statute leaves to the courts and in which the Commission plays no direct role).

In order to carry out this Congressional directive of sentence monitoring, the Commission has worked closely with the Administrative Office of the United States Courts and the United States Judicial Conference to identify and arrange to obtain essential information, while minimizing additional burdens on the court system. As indicated, some necessary feedback will be provided to the Commission through the computerized system and, as more probation offices are equipped with computer hardware, more of the monitoring function can be accomplished in that fashion.

II. STATUS OF SENTENCING UNDER GUIDELINES

For the benefit of the Committee, we have assembled some information concerning the status of sentencing under the guidelines.

Based on survey information we have just received from probation districts which accounted for approximately 87 percent of all defendants convicted and sentenced during during the period July 1, 1986 through June 30, 1987, our research staff has projected a current "snapshot" of guideline sentencing nationwide. This snapshot emphasizes the effects of making the guidelines applicable only to crimes committed on or after November 1, 1987, a legal position that is probably constitutionally mandated and which was explicitly directed by Congress in the Sentencing Reform Act of 1987.

Since November 1, 1987, approximately 230 defendants have been sentenced under the Sentencing Reform Act and the guidelines, while approximately 9,400 have been sentenced under "old law."
Another 1,100 defendants currently awaiting sentencing will be subject to the guidelines.

Thus, it appears that there has been, and will continue to be, a gradual implementation of the guidelines as cases involving crimes committed after November 1 represent a larger share of total cases in the system. This phase-in process is consistent with our expectations, although the early incidence of guideline cases is lower than we had projected.

Significantly, the early results indicate that judges are imposing sentences within the guidelines in approximately 96 percent of the cases. We remain confident that the guidelines will be effective in achieving the purposes of the Sentencing Reform Act and that the emphasis on training will aid the quality of the guideline application process in these early stages.

One factor contributing to the reduced rate at which cases subject to the guidelines have been processed through the sentencing stage apparently has been the litigation at the district court level of expected constitutional challenges to the guidelines. To date, we are aware of constitutional challenges being filed in approximately 75 cases in some 33 districts.

Decisions have been rendered by 10 district court judges to date, with 5 upholding the guidelines and 5 invalidating them.

These defendant challenges typically attack the guidelines and the Commission's authority on separation of powers grounds and as being an excessive delegation of Congress' legislative power. As I indicated, the occurrence of this litigation was anticipated by the Commission, which as an amicus is supporting the Department of Justice in the defense of the guidelines. Our response to the constitutional issues differs somewhat from the Department of Justice, however, in that we view the task of promulgating sentencing guidelines as in aid of the judicial function of sentencing, while the Department contends that it is an executive function. Regardless of the divergence in our respective approaches, both the Commission as amicus curiae and the Department argue that the guidelines are constitutional.

The mushrooming number of constitutional challenges, the expected continued divergence in court decisions, and the resulting problems and costs of resentencing proceedings which will inevitably be necessary in a large number of cases (once the challenges are finally resolved through the appellate process) all argue strongly for expediting an appeal to and decision from the United States Supreme Court. The Commission has unanimously voted to urge the Attorney General and the Solicitor General to pursue an expedited appellate procedure and schedule, and we will be prepared to support that effort in the courts.

III. BUDGET REQUEST AND JUSTIFICATION

With this status report of the Commission's activities and the status of guideline sentencing as context, let me turn to the continuing Commission functions which form the basis for our FY 1989 appropriations request and the specifics of that request.

1. Future Tasks

It is appropriate to emphasize that, although the initial sentencing guidelines have been issued, the Commission's work is far from being completed. Even a cursory review of the statutory mandate shows that Congress anticipated a number of important task for the Commission beyond the promulgation of the first set of sentencing guidelines. Accordingly, Congress provided for a full-time Commission during the first 6 years following the effective date of the guidelines. The focus of the Commission is now, in fact, necessarily broader than in the early stages of its work, when its efforts were concentrated almost exclusively on developing an initial set of sentencing guidelines and in which it drew heavily on the resources of other institutions in the criminal justice system. As the Commission's mission evolves, so also we expect that it may be called upon to shoulder a larger share of the expenses associated with its work.

The statement in support of the Commission's FY 1989 budget request, contained in the budget documents before the Committee, provides a detailed discussion of expected future Commission projects and needs for funding. I will not repeat that discussion here, but will simply summarize by indicating that those future tasks and projects basically fall into one of four categories: (1) sentence monitoring and information analysis; (2) development and issuance of new sentencing guidelines and amendments to existing guidelines; (3) sentencing research; and (4) sentencing education.

The research mission of the Commission deserves further elaboration because of its growing importance. During the past year, the Commission's research group has designed and initiated research studies mandated by the Sentencing Reform Act of 1984, including evaluation of "the impact of the sentencing guidelines on prosecutorial discretion, plea bargaining, disparities in sentencing, and the use of incarceration."

In particular, the Commission has initiated research projects to assess the impact of the guidelines on three areas:

- recidivism and incapacitation
- sentencing disparities
- the guilty plea process and prosecutorial discretion.

a. Recidivism and Incapacitation Study. The sentencing guidelines include an incapacitative element evidenced most prominently by the criminal history table. Under the guidelines, recidivists are treated more harshly than first offenders both because they deserve more punishment under "just deserts" theory and because career criminals are more likely to commit crimes in the future and, therefore, are appropriate targets for incapacitative incarceration. Research will explore these issues to determine how well the guidelines perform incapacitative functions.

b. Disparity Study. Eliminating unwarranted disparity in sentencing was one of the primary reasons the Congress established the Sentencing Commission. Indeterminate sentencing had produced widely disparate sentences for similar offenders convicted of similar offenses. Guideline sentencing is designed to eliminate unfairness by structuring a judge's discretion into narrow sentencing ranges in which the maximum by law cannot exceed the minimum by more than 25 percent.

Using data developed under FPSSIS (Federal Probation Sentencing and Supervision Information System) and the guidelines monitoring system, Commission researchers will test the effect of the guidelines on average sentences imposed on similar offenders both before and after the guidelines.

c. Prosecutorial Discretion and Plea Negotiations. Commission researchers will closely monitor prosecutorial discretion and the plea negotiation process under the guidelines using both quantitative and qualitative analysis. One of the research methods to be employed in this area is a survey which the Commission has developed to simulate the effects of plea negotiation on sentencing. Every assistant U.S. Attorney and federal defender in the nation has received a packet of four hypothetical cases, each with different evidentiary factors. Attorneys will be asked to describe the sentences that would be typical for those cases if they resulted in a conviction at trial and by plea. The survey will be repeated two years after implementation of the guidelines. Commission researchers will compare responses to help assess the effect of the guidelines on negotiated sentences.

Researchers will supplement their quantitative work by interviewing Assistant U.S. Attorneys and U.S. Probation Officers in 10 representative districts across the nation. The interviews will assist the Commission in interpreting the data on guilty pleas and will help paint a complete portrait of plea negotiations before and after the guideline sentencing.

d. Supporting Research. In addition to conducting research mandated by Congress and providing support for guidelines implementation, the Commission will continue and expand its research estimating future federal prison population and the guidelines' impact on penal resources. Researchers are also involved in modeling the effect of criminal and administrative sanctions on organizational offenders. This research will be evaluated by the Commission as it drafts guidelines for corporate and organizational offenses.

2. Funds Requested.

In terms of dollars, the Commission is seeking the same amount of new appropriations as it requested, and initially received from this Committee, for FY 1988; i.e., $5,350,000. This represents a marginal increase of $221,000 or approximately 4 percent from the actual FY 1988 appropriation level contained in the final budget compromise, but it is nearly $1 million less than our available total funding for the current fiscal year. The Commission has available to it this fiscal year slightly in excess of $1 million in "no-year" monies remaining from its start-up appropriations. Due largely to the initial guidelines training programs for federal probation officers and the judiciary, the cost of which has been borne almost entirely by the Commission out of funds available to it in the current fiscal year, we do not project any further carryover of these "no-year" funds.

Approximately two-thirds of the FY 1989 request is allocated for projected personnel salaries and benefits. In that regard, the Commission foresees the need to increase, as soon as possible, the number of full-time permanent positions from 54 to 69 (including the 7 voting Commissioners). This increase will permit the Commission to hire several additional professionals to assist with its research programs, as well as several additional staff attorneys to assist the Commission with a variety of legal tasks, including appropriate participation in the ongoing constitutional litigation and guideline amendment drafting. In regard to the latter function, the Commission sees the need to assign a unit of its staff specifically to this drafting task, thereby freeing up other staff to concentrate on the variety of other responsibilities conferred on the Commission. The Commission also anticipates the need to hire a number of additional clerical staff to alleviate understaffing in these critical support functions.

The Commission has also found it necessary to lease additional space to accommodate its research unit. The cost of this office space is also reflected in our budget request.

Offsetting these cost increases for personnel and rent is a proposed reduction in the allocation for "other services." Funding in this budget category will be needed this fiscal year to pay for the cost of guidelines training and other contract services; however, future needs in this category should be substantially less.

Realizing this description of additional staffing needs may appear to some as a blueprint for bureaucracy building, let me emphasize that is not our intent. The plain fact of the matter is that Congress clearly gave this Commission a continuing, evolving mission and anticipated that it would become a permanent operating agency with the necessary internal structure and staff support. In the past, the Commission has borrowed staff from other federal and state agencies, and contracted with others in the private sector, to assist with guideline drafting and other specific projects. In the future, we expect that we will have to do more of our work internally with Commission staff, although we will continue to work cooperatively with the Administrative Office, the Federal Judicial Center, the Justice Department and others.

We further realize that the FY 1989 request is substantially greater than actual spending for FY 1987, in which the Commission returned to the Treasury almost one-half of its $5.8 million appropriation. Realistically, however, we do not believe that this past rate of spending is indicative of future Commission needs. For one thing, we have already increased permanent Commission staff somewhat from past levels and, as I have outlined, we anticipate the need for further staff hiring in a number of areas. Secondly, we had originally expected that a considerable portion of the cost of initial guidelines training programs would be covered in our FY 1987 budget; however, these initial training programs were necessarily pushed forward into FY 1988.

In sum, Mr. Chairman, the Commission requests that Congress appropriate $5,350,000 for its necessary salaries and expenses in FY 1989. This represents a small increase over last year's appropriations, but a substantial decrease from total available funding in the current fiscal year.

Thank you, Mr. Chairman, and members of the Committee for your consideration in this matter. I will be pleased to respond at this time to any questions the Committee may have.

EXHIBIT

Research in action

The impact of the Federal sentencing guidelines

by Michael K. Block and William M. Rhodes

As part of the Crime Control Act of 1984, Congress created the U.S. Sentencing Commission as an independent body in the judicial branch of government. The seven voting and two nonvoting members were appointed by the President and confirmed by the Senate.

The Commission was charged with establishing sentencing policies and practices for the Federal criminal justice system that fulfill the purposes of sentencing—punishment, deterrence, incapacitation, and rehabilitation. Specifically, the Commission was directed to produce guidelines that would avoid unwarranted sentencing disparities while retaining enough flexibility to permit individualized sentencing when called for by mitigating or aggravating factors.

The Commission began its work in 1985 and submitted guidelines to Congress April 13 of this year. The guidelines will automatically take effect November 1 unless Congress rejects them.

Part of Congress' charge to the Commission was to project the impact of the guidelines on the prison population. This is a new and possibly unique step in legislation of this kind. It represents an attempt to forecast policy implications—how changing sentencing practices will affect other parts of the system. This article summarizes the Commission's effort.

The guidelines will dramatically alter sentencing practices in the Federal criminal justice system. To determine the effect on actual sentences and prison population, we developed a sophisticated prison impact model. Sentencing information was collected on more than 10,000 recent cases so that the impact of the guidelines could be more accurately forecast.

Straight probation sentences will decrease

One of the effects of the guidelines will be to reduce straight probation—probation without any conditions of confinement. Under current practice, probation terms that require some confinement include probation with jail as a condition of probation, split sentences, and mixed sentences.

The guidelines create two new types of sentences similar in form to a split sentence. For minimum sentences of no more than 6 months, the defendant may receive a probation term that includes a period of intermittent or community confinement. For minimum sentences of no more than 10 months, the defendant's sentence may be "split" between incarceration and community confinement.

As Figure 1 indicates, 41.4 percent of all convicted defendants currently receive straight probation. After the guidelines are implemented, only 18.5 percent are projected to receive this sentence. Drug law violators offer a dramatic example. Straight probation sentences for convicted drug offenders are projected to fall to 5.1 percent.

For some especially serious crimes, probationary sentences in any form will decline greatly. Currently 41.4 percent of those convicted of crimes against persons receive some form of probation. This proportion is projected to decline to 25.4 percent after the guidelines are implemented. Probation and split sentences for robbery will decline from 26 percent to 5 percent (not specifically shown in Figure 1) and for drug offenses from 33.8 percent to 13.3 percent.

Average time served will increase somewhat

Time served will increase on average from 15.8 months to 29.3 months under the guidelines, with most of this increase concentrated in a few crimes. For most crimes time served will remain essentially unchanged (see Figure 2).

Summary of projected impact

- "Straight" probationary sentences (i.e., sentences that require no form of confinement) will be reduced significantly.
- For especially serious crimes, such as drug offenses and crimes against persons, probationary sentences will decline dramatically.
- For other crimes, like property offenses, the proportion of sentences involving some form of probation will not change appreciably, although probation with a condition of confinement may be substituted for straight probation.
- Average time served for violent offenses will increase substantially. For most property crimes, average time served will remain largely unchanged. Exceptions: burglary and income tax fraud, where average time served will go up.
- Federal prison populations will grow markedly by the end of this century, more as a result of the Anti-Drug Abuse Act of 1986 and the career offender provision of the Comprehensive Crime Control Act of 1984 than as a result of the guidelines.

Michael Block, Professor of Law and of Economics and Policy at the University of Arizona, is a member of the U.S. Sentencing Commission. William Rhodes is Research Director of the Commission.

In estimating the impact of the guidelines on the average length of sentences, we attempted to isolate the effects of the Anti-Drug Abuse Act of 1986 and the career offender provision of the Comprehensive Crime Control Act of 1984. The 1986 drug law significantly increases the minimum and maximum prison terms for most drug offenses. Additionally, the 1984 Act required the Commission to adopt guidelines that would assure that certain repeat offenders—those 18 or older who are convicted of a violent crime or drug offense and who had been convicted of two or more such crimes previously—receive sentences at or near the maximum term authorized. In accordance with this provision, the Commission established for these offenders guideline sentences close to the statutory maximums.

In most cases where neither the drug law nor the career offender provision are applicable, average sentence lengths are not altered radically. For these crimes (firearms, fraud, property, and immigration), the projected reduction in straight probation will be the major impact of the guidelines. More defendants will be confined, but for shorter terms than at present. Their confinement will frequently be in community-based or other minimum-security facilities.

Income tax evasion is the one crime not subject to either the drug law or the career offender provision where the guidelines themselves are projected to have a major impact on average sentence length. The average sentence is projected to more than double from a current level of less than 6 months to approximately 1 year. Not only will probation be reduced and hence the probability of confinement be increased, but the overall amount of confinement will also be increased. This increase in sentencing severity follows from treating income tax evasion like other frauds resulting in comparable dollar losses.

The guidelines alone will not have a major impact on prison population

The precise effect of these changes on overall prison demand is not obvious. For example, a significant increase in the sentence for a crime rarely prosecuted will have little effect on prison

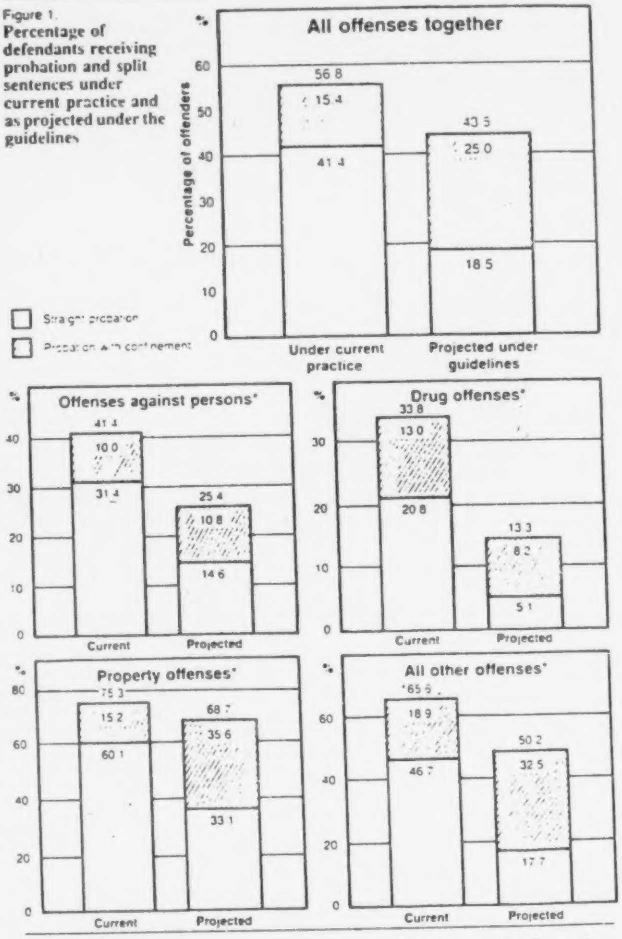


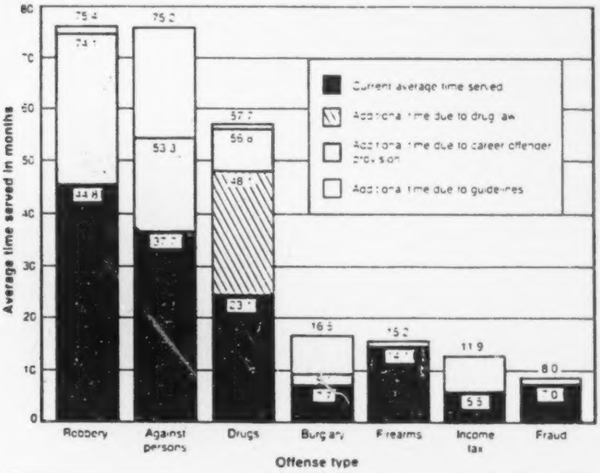
Figure 1.
Percentage of defendants receiving probation and split sentences under current practice and as projected under the guidelines

Note: In these charts, straight probation refers to probation without any period of confinement. Probation with confinement refers under current practice to probation with any form of incarceration (with jail as a condition, split sentences, and mixed sentences). Under the guidelines, probation with confinement also includes intermittent confinement or residence in a community treatment center.

"Offenses against persons" includes homicide, assault, rape, and kidnapping. "Property offenses" includes embezzlement, forgery, larceny, property destruction, counterfeiting, and auto theft. "All other offenses" includes robbery, burglary trespass, fraud, and income tax, firearms, and immigration offenses.

The impact of the Federal sentencing guidelines

Figure 2.
Time served under current practice and projected impact of recent drug law, career offender provision, and guidelines



The average time served is reported for *all* offenders including those not sentenced to prison, who are counted as having 0 months of imprisonment. Imprisonment includes prison, jail, and community corrections confinement.

Note: The impact of the guidelines on two other offenses is expected to be negative. The average time served for property offenses is expected to go down to 6.5 months from the existing 6.8 months. For immigration offenses the time served is likely to go down to 5.2 months from the current 5.7.

demand. By contrast, a small increase or decrease in the average sentence for a frequently prosecuted crime may have a substantial impact.

The Commission has projected prison demand for the years 1992, 1997, and 2002. The projections for 1992 are believed to be the most accurate because prosecution policies are unlikely to change significantly over this time period. This is especially true over the next 3 years, during which the present administration will continue to influence prosecution policies.

The 10-year projections merit somewhat less confidence. Nevertheless, they provide a general impression about prison demand over a longer time period. The 15-year projections are necessarily very speculative and are presented only so the long-term relative effects of the Anti-Drug Abuse Act, career offender provision of the Comprehensive Crime Control Act of 1984, and guidelines can be considered.

To estimate the impact on the Federal prison system of the guidelines, the Anti-Drug Abuse Act, and the career offender provision, we first had to establish as a "baseline" a projection of future prison demand in the absence of any change in current sentencing practices. Some assumptions necessarily had to be made about the future growth or decline in criminal prosecutions. This is difficult because criminal caseloads are determined by the crime rate, by expenditures on investigative and prosecutorial resources, and by administration policy as carried out by U.S. attorneys. To deal with these unknowns, two different scenarios were considered; one presumed "low growth" in the prosecution rate and the other presumed "high growth."

Figure 3 depicts 15-year prison population projections under low-growth and high-growth assumptions. Projections are given for both existing and future sentencing practices.

Even before considering the effect of these new statutes, prison population under the low-growth scenario is projected to increase 50 percent in the absence of any new statutes or change in sentencing practices.

The new drug law will cause a substantial increase in future prison populations—from 42,000 in 1987 to 85,000 in 1997. The number of inmates will double over the next decade *even under a low-growth assumption and even if the Commission did not exist*.

If we also take into account the career offender provision, *the incremental effect of the guidelines is relatively modest, only about 6 percent in 1992, 3 percent in 1997, and 2 percent in 2002*.

Under the high-growth projections, if prosecutions actually grow at this high rate over the 15-year period, we could expect more than a doubling of the present prison population without any change in sentencing practices.

High-growth projections suggest that, given current trends in prosecutions, future demands on the Federal prisons will exceed present prison capacity by significant proportions. While we treat these projections as the upper limit of future prison demand, they are not beyond the range of experience. Over the last 15 years, the Federal prison population has more than doubled, from more than 20,000 to more than 40,000.

Under this high-growth scenario, the drug law is projected to have a substantial effect on future prison population. Because of the drug law, the prison population is projected to increase by over 17 percent in 1992, 39 percent in 1997, and 46 percent in 2002.

The impact of the Federal sentencing guidelines

The effects of the guidelines are modest in comparison. Specifically, the additional effect attributable to the guidelines is 7 percent in 1992, 4 percent in 1997, and 4 percent in 2002. Although the impact of the guidelines is somewhat larger under this scenario than under the low-growth scenario, it is still modest. Even the upper bound of the impact of the guidelines on prison population is not likely to be significant. The same cannot be said for the impact of the new drug law, or for that matter, the career offender provision of the Comprehensive Crime Control Act of 1984.

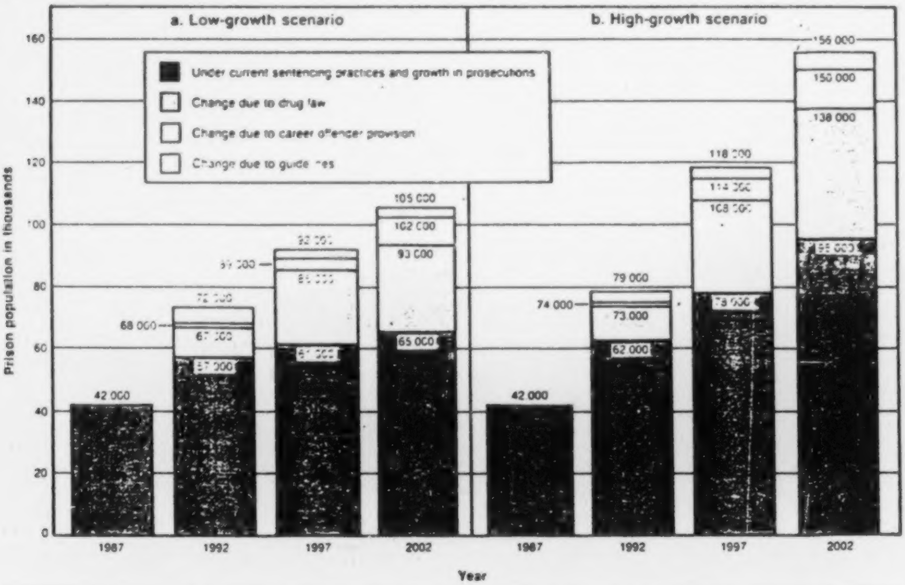
Problems in projecting the guidelines' impact

One obvious factor that substantially influences any prison population forecast is the future level of crime. Except for short-term projections, however, no reliable method exists for predicting future crime rates. Moreover, changes in the sentencing structure can be expected to affect crime through deterrence and incapacitation.

Even if future crime rates could be predicted with an acceptable degree of accuracy, historical data indicate a weak relationship between changes in the number of offenses of a given type and changes in the contemporaneous level of Federal prosecutions. Such discrepancies result partially from the exercise of discretion by Federal prosecutors and partially from changing enforcement priorities. To the extent that priorities are set by the administration in office, predicting future priorities involves predicting the outcome of future elections and the policies successive administrations will pursue. These highly speculative factors make the forecasting problem especially difficult.

Figure 3

Prison population projections



a. Low-growth scenario. The baseline projections for 1987–1989 are based on the average annual growth for the years 1982–1986. Thereafter, criminal cases were assumed to grow at a rate of 1 percent per year.

b. High-growth scenario. The baseline projections for 1987–1991 are based on the average annual growth for 1982–1986. Projections for 1992–2002 are based on the average annual growth that reproduces the same 15-year percentage growth for 1987–2002 that was observed for 1971–1986.

There is also the question of how closely Federal judges will follow the guidelines. Judges may depart from guideline sentences for factors not adequately considered in the guidelines, provided they explain in writing their reasons for departure. While the Commission does not expect departures from the guidelines to occur with great frequency, it is not known how often they will occur, which direction they will take, and how large they will be. Thus, the discretion to depart from the guidelines, which is integral to the legislation that established the Commission, creates uncertainty about the ultimate impact of the guidelines on actual sentences.

Future plea negotiations are another problem that clouds prison projections. Plea negotiations are an integral part of Federal criminal justice administration. Recognizing the functional role of plea bargaining, the guidelines attempt to structure the bargaining process, not eliminate its practice. The plea bargaining environment must change under the guidelines, but the nature and extent of the changes are unknowable, creating additional uncertainty for projecting future sentencing practices.

Using sensitivity analysis, we adjusted impact projections to account for the uncertainty inherent in projecting future prison demands in the face of major policy innovations. All the results reported in this article are somewhat affected by alternative assumptions adopted for the sensitivity tests, but the major conclusions are substantively unaffected.

Against the backdrop of these various problems, one might nevertheless fear that any impact projections will be far too speculative to be trusted. But decisionmakers do not have the luxury of adopting this view. Failure to project the impact of the guidelines on sentences and on prison capacity as realistically as possible could convert an imprecise decisionmaking process into a wholly arbitrary one.

Details of the model the Commission developed and of the data used for the projections may be found in the Supplementary Report on the Initial Sentencing Guidelines and Policy Statements *published by the Commission.*

STATEMENT OF
HONORABLE JOHN C. GODBOLD
DIRECTOR, FEDERAL JUDICIAL CENTER

Mr. Chairman, it is my privilege as Director of the Federal Judicial Center to present the Center's fiscal year 1989 appropriations request, as well as a request for a fiscal year 1988 supplemental appropriation.

Mindful of the necessity for fiscal restraint yet remaining faithful to the obligations imposed on the Center by statute, we are requesting what I believe is a modest fiscal 1988 supplemental and a conservative fiscal 1989 request. Our fiscal 1988 appropriation is $276,000 less than our fiscal 1987 appropriation. The number of persons to whom we must provide education services has grown substantially. These facts make it necessary for us to request these increases in our budget authority.

The Center must provide education and training services to the 2,336 new judicial branch personnel authorized for the courts in fiscal 1988, or requested by them in fiscal 1989. Reprogramming by the courts this fiscal year could add substantially to this number. However, we have limited our fiscal 1989 programmatic request to funds for the education and training of the 395 Probation/Pretrial Services officers requested by the courts. We will absorb within our budget the costs required to train the remaining 1,941 new personnel. Whether we can also absorb training costs for any new personnel added by reprogramming action remains to be seen.

Also, the Center has not requested additional funds to support education programs for judges, magistrates, probation officers and others concerning the new Sentencing Guidelines that went into effect this past November 1. To date we have funded and developed sentencing guideline education programs in cooperation with the U.S. Sentencing Commission, with the Commission contributing the major share of funding. However, we have been advised by Sentencing Commission staff members that, at this time, the Commission does not project that additional funds will be available to it for guideline education purposes in fiscal 1988. If the Sentencing Commission cannot share in the funding, the Judicial Center will discharge this training responsibility to the best of its ability within its existing funding levels. However, if the amount of follow-on guideline sentencing education needed by judicial personnel turns out to be more substantial than currently anticipated, it may be necessary for us to seek additional funding. Again, for the time being, with respect to this training, we will tighten our belts and proceed with the funding we have.

Fiscal 1989 Request

Permit me to turn to the specifics of our fiscal year 1989 request for $12,109,000 which represents an increase of $541,000 over the amount expected to be available in fiscal year 1988.

A little less than half of this increase ($249,000) results from the effects of inflation and uncontrollable cost increases for such items as space rental fees imposed by GSA, postage, utilities, and charges for Federal Telecommunication Services (FTS).

The balance of this increase ($292,000) will allow the Center to fulfill its statutory obligation to provide training for the 395 new probation/pretrial services officers requested by the United States Courts (112 officers in a fiscal 1988 supplemental and 283 officers in the courts' fiscal 1989 budget). The majority of this amount will enable these new court personnel to attend orientation seminars immediately following their appointment and to participate in skill development training sessions in subsequent years. A small portion, approximately $17,000, will provide for the rental of meeting facilities and audio-visual equipment for these training programs.

Fiscal 1988 Supplemental Request

The Center's fiscal year 1988 appropriation of $11,568,000 is $1,378,000 less than the amount originally requested, $952,000 less than the amount initially authorized by this Committee and $276,000 less than the Center's fiscal year 1987 appropriation. This reduced level of fiscal 1988 funding has required the Center to defer several education programs for current judicial personnel and several systems development projects. All are important and needed by the federal courts. Consequently, we request a fiscal year 1988 program supplemental of $798,000 to allow us to proceed with the most important of these deferred programs and projects. $498,000 of this request will be used to conduct education and training programs for judges, probation officers and support personnel. The remainder of the request, $300,000, will allow the Center's Innovations and Systems Development Division to proceed with three needed technical assessment studies involving public access to court automated systems, electronic document storage and retrieval, and computer security devices.

Finally, we request fiscal year 1988 supplemental funding in the amount of $222,000 to provide for increased pay costs, increased employee health benefits costs, and additional costs related to the Federal Employees Retirement System.

Conclusion

The Center's fiscal year 1988 supplemental and fiscal year 1989 requests are required to allow the Center to provide services--education and training programs for federal court personnel and technical development support for the federal courts--which are central to the Judicial Center's mission.

My associates and I will be pleased to try to answer any questions you or other members of the subcommittee may have concerning the Federal Judicial Center's appropriations requests or any aspect of the Center's operation.

BUDGET REQUEST

Judge MESKILL. The request for an increase in our appropriations for the 1989 budget consists of general categories as follows: $34 million is to annualize the cost of the new salary increases for bankrupcy judges and magistrates who were authorized by Congress last year, and also to cover the cost of the 2-percent pay raise that all of the employees except those at the highest levels have received.

The sum of $55.5 million is to restore funds provided by Congress to offset our current 1988 appropriation reduction. This takes into account certain carryovers that we have had available from prior years, which obviously are needed in 1988 and, therefore, in the 1989 budget they reappear and make our overall budget request look larger than it is, even though, admittedly, it is very large.

The sum of $42 million is to implement the new sentencing guidelines imposed by Congress and also to deal with the influx of death penalty cases. In 1976, the death penalty was reinstated and we are getting more and more Federal habeas corpus actions brought by people on death row.

A total of $35.2 million is to cover rent and alterations to house mostly judges and other judicial personnel. This is primarily for new senior judges who are being moved out of their chambers to make room for their replacements but who are continuing to perform judicial services and they have to be housed as well as other new judges.

There is a $19 million figure for inflation and they use a 4-percent inflation factor and apply it to those items that are inflation sensitive, like maintenance contracts, postage increases which we expect to go through very shortly, and also increases that the General Services Administration will be charging for the Federal Telecommunications Service [FTS].

For the staff and salaries of the new senior judges, $6 million, even though they have been getting salaries and they have had staffs in the past, their replacements will be taking over their salary spot in our budget, so they are treated in our budget as being new judges.

Also, $2 million, the new authorized level to fund the drug-dependent offenders program, which is used mostly for testing and counseling. The experience has been reported to be good in that area.

The remaining $131 million is for: court security, $16 million; automation, $43 million; job reclassifications and rate increases for court personnel including panel attorneys, $27 million; new personnel, $27.9 million; and $17.6 million for other miscellaneous increases.

That pretty much sums up the explanation of how we come up with the increase in the 1989 budget request.

SENIOR LEVEL STAFF

Senator HOLLINGS. Judge Meskill, let me find out about two or three things. Mr. Mecham had some staff that he wants to upgrade.

Mr. MECHAM. Three.

Senator HOLLINGS. How many?

Mr. MECHAM. Three.

Senator HOLLINGS. If you get anything in here, I have to sneak it in, because I have the 2-percent cap which, as you can see, doesn't take care of anything. So, if we have anything that is new at all, can you elaborate on that which is most critical?

Mr. MECHAM. I will be happy to.

We have great difficulty maintaining and recruiting top level executives. We are trying to get people to come in from the courts. Our circuit executives get paid more than our top administrators do, so we have trouble getting people with experience.

What we would plan to do is to have an assistant director for planning and management, which would be a new position that would receive an additional grade, an increase. Then we have two people who, unfortunately, do not have the same level as their peers do.

We have an assistant director who is paid at the GG–18 level, and we would be pleased to increase his level to the same level as the other assistant directors. This would be true of our legislative affairs director as well. This would be where those three positions would go.

This would then enable us to free-up three super grades, which we already have, and we would be able to elevate other people.

IMPACT OF BUDGET REDUCTIONS

Senator HOLLINGS. What other needs do you have, Mr. Mecham, are there some others there?

Mr. MECHAM. There are a number of things, Mr. Chairman, that are of particular concern to us.

When I took over as head of the Administrative Office 2½ years ago, Chief Justice Burger told me to put the brakes on and to make sure of what we were doing, which we did. We withdrew a request for additional positions before this committee, and we have really been trying to determine the direction that we should move in.

We now feel that we know where we have to go. We are in a position now where, under the present funding levels, we are having to maintain 30 vacancies because we don't have money even for authorized personnel during the current fiscal year, and that is in addition to our normal 3-percent vacancy rate. We are really hurting on the staff side of things.

Our payroll and our accounting systems are about to expire; they are 13 years old. We are really in need of added support there.

I could give you a lot of detail, Mr. Chairman, but those are some of the principal items where we are having difficulty.

We have had to put a freeze on all travel. Starting around June 1, the travel money will run out, which means our automation and equipment people will not be able to go out and help the courts install their automated equipment to go into the courts.

We have about 20 audits scheduled during that 3-month period, but our Office of Audit and Review will not have travel money.

Likewise, our space and facilities people will not be able to travel and help either; as we try to help judges like Judge Meskill get into chambers. We have to try to keep the program going and work with the judges, and if we can't go out on the scene and help them, we are really in difficulty.

Senator HOLLINGS. How much do you need in travel money to keep you going until the end of the fiscal year, past June to the end of September?

Mr. MECHAM. About $200,000 for travel would enable us to take care of that. Of course, we would need additional moneys for the staff, but the travel would be about $200,000.

We have had to really freeze all controllable expenditures, equipment, furniture, and alterations.

Senator HOLLINGS. Judge, your time is too important for me to go through all of these questions. What I am going to do, rather than belabor you, sir, is submit them for the record.

We may be able to do something about the fiscal constraints facing us this year, but to go outside of the summit agreement will require a two-thirds vote—and having served yourself you know how difficult that can be.

Part of this same budget is drug enforcement, and they are asking for way more on the drug enforcement part of it. They were cut back. In this same budget we have several others that will be suffering.

I keep hearing that everybody is going to close down. You are going to stop traveling in June. Radio Free Europe is going to close in July because they will run out of money due to exchange rate losses. I don't know whether we will pass a supplemental. You have an emergency supplemental up here, too, haven't you?

Judge MESKILL. Yes, sir, we do.

We are not threatening to close down or anything, but if we only get 2 percent in our next budget, our staffing level will go down to, we believe, about 85 percent because the caseload keeps increasing. The increased demand, particularly with the sentencing guidelines being implemented, the number of probation officers that we are going to have to hire in order to keep up with that, is going to be tremendous.

SENTENCING GUIDELINES

Senator HOLLINGS. Give me a feel for that? What is happening? You go to your own circuit.

Judge MESKILL. We are going to feel it in the appeals level as well, Senator.

Previously, a probation officer filed a presentence report after a person was either convicted or plead guilty. The presentence report would deal with background, family prospects for this person, to give the judge some idea of the type of sentence that would be appropriate, and the judge had considerable discretion.

Evidently, there were those who thought that judges sentenced too lightly, and some who thought that there was too much of a disparity in the sentences, and they came up with this legislation which resulted in the sentencing guidelines.

Under it, the probation officers have to do a lot more work. First of all, they have to look into the offense category. Take, for example, armed bank robbery, instead of just saying a man was convicted of armed bank robbery and he had three prior convictions, this is what we recommend, they have to look at that bank robbery and they look at the characteristics of the event.

Was he himself armed, or was he with armed people? Was he a lookout? Was he the leader? If he was armed, did he use the weapon?

Senator HOLLINGS. This is under the new guidelines?

Judge MESKILL. This is under the new guidelines. Then they have to look at his past record. Not only is he a person who has been convicted before, but what had he been sentenced to before, and what were the conditions of the sentence, and how long ago were they?

There are points. For example, if he was involved in the armed bank robbery and he was a lookout, he wasn't himself armed, that would be a point or so added in his favor. If he ran in shooting with a gun in the air, scaring everybody to death, maybe hitting one of them, he would be marked down.

Senator HOLLINGS. That is in that thing that I voted for?

Judge MESKILL. In the sentencing guidelines. You didn't vote for the guidelines, except I believe there was a move to delay the effective date of them beyond November 1, but it was not considered favorably by the Congress.

The guidelines, I think it was one of these situations where you could refuse to adopt them, but if there was no action, they went into effect, I believe. The long and the short of it is that the probation officers are going to have to spend a lot more time on each individual case. It is just going to mean that there will have to be more probation officers.

When the reports then come in, they are supposed to go to the judge in a form with all of this information and all of these pluses and minuses added, so that the judge knows that this person falls within a certain range. The judge can then sentence anywhere within that range.

Even though the statute may say that a person can get 1 to 10, he may end up in a situation where he can get 1 to 3, or maybe 5 to 9, or whatever, and then the judge has some discretion, but he has to give reasons if he sentences outside the guidelines and the reasons, such as factors which were not considered in setting up the guidelines.

If he sentences above the guidelines, the defendant can appeal; below the guidelines, the government can appeal. What is going to happen is that even if he sentences within the guidelines, either side can appeal because they can claim that the guidelines were misapplied.

When you said that as an appellate judge, I might not be influenced or affected by this, we will be affected. We haven't seen the appeals yet because guideline sentencing only applies to offenses committed after November 1, 1987, and these people haven't come through the system yet, although the probation people are beginning to feel the effect already.

Senator HOLLINGS. What do you think of those guidelines?

Judge MESKILL. I would rather not comment. It is policy that was decided.

Senator HOLLINGS. I know now where you stand. [Laughter.]

Judge MESKILL. Personally, I am not speaking for the Judicial Conference, I have never favored appellate review of sentences unless it was an illegal sentence, but now we are going to be reviewing them.

Senator HOLLINGS. I think that it just too light sentencing in drug cases, particularly in Florida. The drug cases, they will run away from my State. I have some hanging judges, so they will run or try to get the case moved to Florida as we well know.

I think those extreme situations, putting on bond over in New Orleans, and they jump bond after we had spent 2 years getting one of those kingpins. That is really what prompted the thing.

I really don't like taking the discretion from the judges, putting the judge on trial, and going to this tremendous bureaucracy, and then let's talk about cutting spending.

Judge MESKILL. That is right.

IMPLEMENTATION OF SENTENCING GUIDELINES

Senator HOLLINGS. How do you do it?

Judge MESKILL. I don't know.

Mr. MECHAM. You might be interested, Mr. Chairman, that the Judicial Conference of the United States is meeting just as we speak across the street. The Chief Justice met this morning—he asked me to convey his greetings to you—with the district court judge members. His question was: What is happening so far on sentencing guidelines?

Just a couple of anecdotes. All of the judges agreed, from what they have seen in their circuits, and all of the circuits were represented, there are going to be more cases going to trial because Congress has removed substantially, through this sentencing guideline process, the incentive to plea bargain, because there is limited discretion now on the part of the judge.

What they are finding is that more cases are going to trial. One judge said that his sentencing time, because of the complexities involved, has increased by about 50 percent. So if we spread that clear across the system, and most judges agreed that this is what is happening so far under the 3 or 4 months of experience, it is going to be a major time consumer of the court, a major workload increase, and, regrettably, Judge Meskill will have to be in here next year asking for more money again.

Senator HOLLINGS. I can't thank you enough.

We will be working with Mr. Mecham and do the best we can do.

Judge MESKILL. Thank you, Senator.

PREPARED STATEMENT

Mr. MECHAM. May I offer my statement for the record also?

Senator HOLLINGS. Yes; it will be printed in the record.

[The prepared statement of Mr. Mechem follows:]

STATEMENT

OF

L. RALPH MECHAM

DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU ONCE AGAIN TO PRESENT THE BUDGET ESTIMATES FOR THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS. ASSISTING ME TODAY ARE RAYMOND A. KARAM, ASSISTANT DIRECTOR FOR ADMINISTRATION, AND OTHER MEMBERS OF THE ADMINISTRATIVE OFFICE STAFF.

MR. CHAIRMAN, I WILL PROVIDE THE COMMITTEE WITH A SYNOPSIS OF WHERE WE STAND AT THE ADMINISTRATIVE OFFICE, AND WHERE WE ARE HEADING. IN MY STATEMENT TO THE COMMITTEE LAST YEAR, I DESCRIBED HOW THE WORKLOAD OF THE ADMINISTRATIVE OFFICE CONTINUES TO INCREASE BECAUSE OF ADDED RESPONSIBILITIES WE HAVE BEEN GIVEN BY THE JUDICIAL CONFERENCE OF THE UNITED STATES AND BY THE CONGRESS. THE DEMANDS PLACED UPON THE ADMINISTRATIVE OFFICE STAFF TO PROVIDE SUPPORT SERVICES TO THE UNITED STATES COURTS ARE INCREASING IN SCOPE AND COMPLEXITY.

WE PERFORM THREE MAJOR FUNCTIONS FOR THE COURTS: PROVIDE ADMINISTRATIVE SUPPORT; PROVIDE PROGRAM SUPPORT AND POLICY GUIDANCE; AND PROVIDE STAFF SUPPORT TO THE 25 COMMITTEES OF THE JUDICIAL CONFERENCE. WHETHER IT BE THE EVALUATION OF NATIONWIDE PROCUREMENT CONTRACTS FOR COMPUTERS, ASSISTING THE COURT FAMILY WITH THE IMPLEMENTATION OF NEW LEGISLATION OR CARRYING OUT THE DIRECTIVES OF THE JUDICIAL CONFERENCE -- OUR WORK IS VITAL FOR THE EFFECTIVE FUNCTIONING OF THE FEDERAL COURT SYSTEM.

USES OF ADMINISTRATIVE OFFICE RESOURCES

JUDICIAL GOVERNANCE

ONE OF THE MOST IMPORTANT, AND AT THIS TIME ONE OF THE MOST DEMANDING AREAS WHERE THE ADMINISTRATIVE OFFICE IS PROVIDING SUPPORT SERVICES, IS THE SUPPORT WE GIVE TO THE JUDICIAL CONFERENCE OF THE UNITED STATES. AS YOU KNOW, WITH THE CHIEF JUSTICE AS ITS PRESIDING OFFICIAL, THE CONFERENCE IS THE POLICY-MAKING BODY FOR THE FEDERAL JUDICIARY. THE ADMINISTRATIVE OFFICE STAFF PROVIDES THE INFORMATION AND DATA THE COMMITTEE MEMBERS OF THE CONFERENCE REQUIRE, AND IMPLEMENTS THE DIRECTIVES OF THE CONFERENCE.

THE CONFERENCE HAS BEEN RECENTLY REORGANIZED TO MEET THE GROWING NEEDS OF THE JUDICIARY. I SERVE AS SECRETARY TO THE CONFERENCE AND HAVE RECENTLY ESTABLISHED AN OFFICE OF THE JUDICIAL CONFERENCE SECRETARIAT WHICH SERVES AS THE COORDINATING BODY FOR ALL OF THE VARIOUS REPORTS AND STUDIES OF POLICY IMPLEMENTATION.

THE LAST TIME THE CONFERENCE WAS REORGANIZED WAS IN 1968, AND IT BECAME APPARENT THAT THE TIME WAS RIGHT FOR SOME CHANGES. FOR EXAMPLE, THE $57 MILLION PER YEAR COURT SECURITY PROGRAM HAD BEEN CREATED, BUT THERE WAS NO CONFERENCE COMMITTEE DIRECTLY OVERSEEING IT. THE RESOURCES AVAILABLE FOR SUPPLYING THE COURTS WITH SPACE HAD BECOME, AND STILL ARE, EXTREMELY LIMITED, SO A COMMITTEE TO SET POLICY FOR THE SPACE AND FACILITIES NEEDS OF THE COURTS WAS ESTABLISHED. THERE HAVE BEEN A NUMBER OF OTHER CHANGES INCLUDING STRENGTHENING THE EXECUTIVE COMMITTEE OF THE JUDICIAL CONFERENCE WHICH WAS DELEGATED AUTHORITY TO TAKE ACTION BETWEEN CONFERENCE MEETINGS. SINCE NOVEMBER, THE EXECUTIVE COMMITTEE HAS MET FIVE TIMES.

TO SUPPORT THE JUDICIAL CONFERENCE, WE DEDICATED 37 STAFF YEARS IN 1987, WHILE IN 1988 42 STAFF YEARS WILL BE USED, AN

INCREASE OF 14 PERCENT, AND NO ADDITIONAL RESOURCES HAVE BEEN PROVIDED TO DO THIS WORK.

The Automation Explosion

The fast-paced world of automation is proving to be one of the most significant areas of growth in the Federal Judiciary. Judge Arnold will address the funding requirements for the automation needs of the courts tommorrow. The point I would make is that the Administrative Office should be playing a leadership role in automation. Instead, the Administrative Office lags far behind the courts. Many of our software programs, particularly those for central accounting and payroll, are just barely being held together. In addition, the Administrative Office cannot fund for our own use the computer hardware that in many instances is in place in the courts; and is at a disadvantage in giving the Courts the support they need in this area.

The support of court automation from the Administrative Office, includes the installation of data communications capabilities, the implementation of automated case management systems, the installation of office automation equipment, and continuous trouble-shooting and day-to-day assistance. The ADP staff at the Administrative Office is responsible for providing standard operating procedures, guidelines, and policies for the automated systems of the federal Judiciary. In addition to providing the technical hardware and software assistance the courts need, we must also be project managers for all of the nationwide automation programs. There has to be one source of standards for the systems the courts use and the maintenance of those standards must be the Administrative Office. We have the expertise and experience to deal with the specific problems the courts encounter.

The size of these automation programs is large and, without additional resources in the Administrative Office, the courts

WILL EXPERIENCE DIFFICULTY IN MAKING THE BEST USE OF THEIR EQUIPMENT AND THE POTENTIAL EFFICIENCIES POSSIBLE WITH AUTOMATION. AS THE FEDERAL JUDICIAL CENTER HAS TRANSFERRED OPERATIONAL RESPONSIBILITY TO THE ADMINISTRATIVE OFFICE FOR SYSTEMS IT DEVELOPED, OUR RESOURCES HAVE NOT KEPT UP WITH INCREASED DEMANDS.

GREATER WORKLOAD, BUT DIMINISHING RESOURCES

IN SPITE OF OUR GROWING WORKLOAD, THE SIZE OF THE ADMINISTRATIVE OFFICE STAFF IN RELATIONSHIP TO THE GROWTH OF PERSONNEL IN THE COURTS HAS BEEN DECLINING AND CONTINUES TO DO SO. IN 1983, AS CAN BE SEEN FROM THE GRAPHS WHICH I HAVE SUBMITTED WITH MY STATEMENT, EACH ADMINISTRATIVE OFFICE EMPLOYEE SUPPORTED ABOUT 29 COURT EMPLOYEES. IN 1988, EACH ADMINISTRATIVE OFFICE EMPLOYEE SUPPORTS ABOUT 34 COURT EMPLOYEES, AN INCREASE OF 17 PERCENT. FURTHERMORE, FUNDING FOR THE ADMINISTRATIVE OFFICE IS DECLINING IN RELATION TO THAT OF THE COURTS. IN 1983, THE ADMINISTRATIVE OFFICE ACCOUNTED FOR ABOUT 3.0 PERCENT OF THE JUDICIARY'S BUDGET. EVEN ASSUMING APPROVAL OF OUR 1988 SUPPLEMENTAL FUNDING REQUEST, THE ADMINISTRATIVE OFFICE WILL ACCOUNT FOR ONLY 2.5 PERCENT OF THE JUDICIARY'S BUDGET. IF OUR 1989 APPROPRIATION REQUESTS ARE APPROVED AS SUBMITTED, EACH ADMINISTRATIVE OFFICE EMPLOYEE WILL SERVICE 35 COURT EMPLOYEES AND THE PERCENTAGE SHARE OF THE ADMINISTRATIVE OFFICE BUDGET TO THE TOTAL JUDICIARY WILL FALL TO 2.4 PERCENT. IN SHORT, THE DEMANDS ON THE ADMINISTRATIVE OFFICE INCREASE, WHILE RESOURCES AVAILABLE TO THE ADMINISTRATIVE OFFICE DECREASE.

IT SEEMS CLEAR, MR. CHAIRMAN, THAT IN SPITE OF THE GROWING WORKLOAD OF THE COURTS AND THE DEMANDS PLACED UPON THE ADMINISTRATIVE OFFICE, I AM BEING ASKED TO PROVIDE SUBSTANTIALLY MORE SERVICE WITH COMPARATIVELY FEWER STAFF AND FINANCIAL RESOURCES. I BELIEVE WE HAVE NOT ONLY REACHED THE SATURATION POINT, BUT WE ARE AT THE BREAKING POINT.

When I first became Director two and a half years ago, we put the brakes on at the Administrative Office. I asked your Committee to defer action on one-half of the positions we requested for fiscal year 1986. At the direction of then Chief Justice Burger, we took a good hard look at where we were, how relationships between the courts and the Administrative Office could be improved and what work we needed to do that wasn't getting done. The plans are in place to further enhance the service we extend to the courts, the Judicial Conference, the public and to the Bar. Regrettably, however, the personnel and financial resources are not in place. After we get through with paying our people, paying our General Services Administration rent billing, maintaining our computers and other equipment, and paying our phone bill, only about eight percent of our appropriation is left to pay for new personnel, travel, equipment, furniture and supplies. It is indeed difficult to provide any services beyond the status quo, which is not good enough in a period of expanding court activities.

FISCAL YEAR 1988 PROGRAM SUPPLEMENTAL

As you and members of the Committee know, the Administrative Office's 1988 budget request was reduced by almost $2.5 million, or 7.4 percent. This reduction was significantly higher than the reduction for the rest of the Judiciary which, after taking into account balances carried forward and filing fees, amounts to 5.2 percent. Given that our fixed costs, which include personnel on board, office rent, telephone, and equipment maintenance account for about 92 percent of the Administrative Office appropriation, the application of the $2.5 million reduction in our 1988 request equates to a cut of 100 percent of new personnel authorized in fiscal year 1987 and 1988, as well as a drastic reduction in travel at the expense of service to the Conference and the courts, and virtual elimination of equipment procurement.

Because of this, and because we must continue to execute our responsibilities, I have requested supplemental funding for 1988 in the amount of $3,033,000, $570,000 for pay costs and health benefits, $698,000 for the Federal Employees' Retirement System (FERS), and $1,865,000 for program expenditures. Since our estimate for FERS was calculated prior to the close of the open season when fewer persons switched to FERS than we anticipated, I believe our request of $698,000 can be reduced. My staff will work with the Committee's staff to determine how much of the FERS supplemental can be conceded.

Mr. Chairman, as I noted earlier, we have taken a hard look at the organization of the Administrative Office and are ready to proceed with some much needed organizational changes. These changes were set forth in our request last fiscal year. Briefly stated, they focused on establishing a planning and management review office whose job it will be to improve management, sharpen planning by focusing on attaining our long-term goals and objectives, and to assist me in managing the support services of the Judiciary. We also reported on our goals to enhance our financial, computer, space management, and personnel services. Positions for these purposes were authorized, but cannot be filled in view of the $2,499,000 reduction to our requested appropriation for fiscal year 1988. Not only am I unable to accelerate the restructuring of the Administrative Office, but without the supplemental, I must keep the equivalent of 30 positions vacant, which are authorized but cannot be filled in fiscal year 1988. These 30 positions are in addition to the 3 percent vacancy rate the Administrative Office normally experiences.

So that management positions can be established for the reorganization effort, I have also requested that the General Provisions of the 1988 Judiciary Appropriation Act be amended to provide that six persons instead of the three persons currently

AUTHORIZED BE COMPENSATED AT A LEVEL NOT TO EXCEED EXECUTIVE LEVEL IV.

THE ISSUANCE OF SENTENCING GUIDELINES WHICH WENT INTO EFFECT IN NOVEMBER 1987 AND THE ESTABLISHMENT OF 52 NEW BANKRUPTCY JUDGESHIPS, PURSUANT TO PUBLIC LAW 99-554, HAVE CREATED ADDITIONAL WORKLOAD FOR THE ADMINISTRATIVE OFFICE STAFF. AS A RESULT OF THE PROMULGATION OF THE SENTENCING GUIDELINES, OUR PROBATION DIVISION PERSONNEL FIND THEMSELVES PLAYING NEW DUAL ROLES: SERVING AS THE LIAISON FOR THE FEDERAL JUDICIARY ON SENTENCING GUIDELINE IMPLEMENTATION WITH THE SENTENCING COMMISSION AND WORKING WITH THE PROBATION PERSONNEL IN THE COURTS TO ENSURE UNIFORM COMPLIANCE WITH THE GUIDELINES. WE FIND THAT THREE POSITIONS WILL BE REQUIRED TO TAKE ON THIS ADDITIONAL WORK.

IN LAST YEAR'S BUDGET REQUEST SIX ADMINISTRATIVE SUPPORT POSITIONS WERE REQUESTED FOR THE 52 NEWLY AUTHORIZED BANKRUTPCY JUDGES AND THEIR STAFFS OF 156. THOSE SIX POSITIONS WERE NOT APPROVED, AND I FIND IT NECESSARY TO ONCE AGAIN REQUEST THAT THEY BE AUTHORIZED AND FUNDED.

FISCAL YEAR 1989 REQUEST

THE ADMINISTRATIVE OFFICE REQUEST FOR FISCAL YEAR 1989 TOTALS $41,970,000 AND REPRESENTS AN INCREASE OF $7,770,000 OVER 1988, ASSUMING APPROVAL OF OUR PROPOSED PAY COST AND PROGRAM SUPPLEMENTALS. AS I MENTIONED EARLIER, IN RELATIVE TERMS THE ADMINISTRATIVE OFFICE'S SHARE OF THE TOTAL JUDICIARY BUDGET IS PROJECTED TO DECREASE FROM 2.5 TO 2.4 PERCENT IN 1989, IN SPITE OF THIS REQUESTED INCREASE.

THE MANDATORY "ADJUSTMENTS TO BASE" ACCOUNT FOR $1,247,000 OF THIS REQUEST. RESOURCES FOR WORKLOAD INCREASES AND IMPROVEMENTS IN SERVICES ACCOUNT FOR $6,523,000 OF THE REQUEST: $2,033,000 AND 30 POSITIONS -- 14 OF WHICH ARE FOR AUTOMATION; 12 FOR ADMINISTRATIVE SUPPORT; AND FOUR FOR PROGRAM MANAGEMENT

SUPPORT; $200,000 FOR THE ADMINISTRATIVE OFFICE'S SEGMENT OF THE DATA COMMUNICATIONS PROGRAM BEING INSTALLED IN THE COURTS; $100,000 FOR TRAVEL TO INSTALL COMPUTERS IN THE COURTS; $2,490,000 TO BEGIN A THREE-YEAR AUTOMATION PROGRAM FOR THE ADMINISTRATIVE OFFICE; $500,000 FOR CONTRACTUAL SOFTWARE SERVICES FOR THE ADMINISTRATIVE OFFICE'S CENTRAL ACCOUNTING AND PAYROLL SYSTEMS; AND $1,200,000 FOR A MAINFRAME COMPUTER TO REPLACE COMPUTERS THAT HAVE BEEN IN PLACE FOR ABOUT 10 YEARS. OUR COMPUTERS HAVE ACTUALLY OUTLIVED THEIR USEFUL LIFE AND ARE BECOMING PROHIBITIVELY EXPENSIVE IN TERMS OF MAINTENANCE COSTS. IN ADDITION, THIS COMPUTER WOULD RUN THE NEW CENTRAL ACCOUNTING SYSTEM FOR THE ENTIRE FEDERAL JUDICIARY. TO PICK UP ON THE POINTS I MADE EARLIER ON THE IMPORTANCE OF AUTOMATION, ALMOST 90 PERCENT OF THE FUNDING REQUESTED FOR THESE ITEMS IS COMPUTER-RELATED.

TO PROVIDE SOME DETAILS ON THE 30 NEW PERSONNEL REQUESTED:

- FOUR POSITIONS WILL BE USED TO TECHNICALLY SUPPORT AND INSTALL THE JUDICIARY'S NEW DATA COMMUNICATIONS PROGRAM;

- FOUR POSITIONS WILL BE USED TO INSTALL SOFTWARE AND PROVIDE TECHNICAL TROUBLESHOOTING ASSISTANCE TO COURTS WITH DECENTRALIZED COMPUTERS;

- THREE POSITIONS ARE FOR SITE SURVEYS FOR COMPUTER INSTALLATION AND TO HELP MANAGE PREVIOUSLY INSTALLED SYSTEMS;

- THREE POSITIONS WILL PROVIDE OPERATIONAL TRAINING FOR THE SYSTEMS ADMINISTRATORS IN THE COURTS;

- FOUR POSITIONS FOR OUR PROGRAM MANAGEMENT DIVISIONS TO SUPPORT THE DRUG AFTERCARE PROGRAM, AUTOMATED SYSTEMS IN

FEDERAL DEFENDER OFFICES, AND THE ELECTRONIC SOUND RECORDING PROGRAM;

- OF THE TWO BUDGET ANALYSTS REQUESTED, ONE WILL BE ASSIGNED TO THE DECENTRALIZED BUDGET PILOT PROGRAM AND ONE WILL BE ASSIGNED TO THE SPACE AND FACILITIES ACTIVITY;

- SIX POSITIONS WILL PROVIDE SPACE MANAGEMENT SUPPORT TO THE COURTS AND WILL SERVE AS LIAISONS BETWEEN THE COURTS AND THE GENERAL SERVICES ADMINISTRATION; AND

- FOUR POSITIONS ARE FOR MANAGEMENT SERVICES, A PROCUREMENT SECTION CHIEF AND COMPUTER SPECIALIST, AND TWO PERSONNEL CLERICAL ASSISTANTS.

THE $200,000 REQUEST FOR DATA COMMUNICATIONS IS ESSENTIAL IF THE DATA COMMUNICATIONS PROGRAM FOR THE COURTS IS TO BE IMPLEMENTED. THE STAFF AT THE ADMINISTRATIVE OFFICE MUST HAVE THE ABILITY TO COMMUNICATE ELECTRONICALLY WITH THE COURTS, AND SO TOO, DO THE COURTS NEED TO HAVE THIS CAPABILITY IF THE DATA COMMUNICATION PLAN IS TO BE SUCCESSFUL. WITHOUT THESE FUNDS, THERE WILL BE A GAPING HOLE IN THE SYSTEM.

THE FUNDS REQUESTED FOR TRAVEL ARE REQUIRED FOR SITE PREPARATION, TRAINING AND FOLLOW-UP VISITS TO 45 COURTS SCHEDULED TO RECEIVE NEW HARDWARE AND TO 75 COURTS SCHEDULED TO RECEIVE NEW CASE MANAGEMENT AND OTHER TYPES OF ADMINISTRATIVE SOFTWARE USED IN THE DAY-TO-DAY BUSINESS OF COURT OPERATIONS. PREPARATION FOR HARDWARE INSTALLATION REQUIRES INTENSIVE WORK ON THE PART OF THE ADMINISTRATIVE OFFICE STAFF. NOW THAT MANY OF THE NEW SYSTEMS HAVE BEEN DEVELOPED, TESTED, AND HAVE OR WILL SOON BECOME OPERATIONAL, RESOURCES ARE NEEDED TO VISIT SITES, TO BRIEF THE COURT STAFF ON WHAT THEY CAN EXPECT, AND TO ENSURE THAT THE

SYSTEMS ARE INSTALLED WITH THE LEAST AMOUNT OF DISRUPTION TO THE COURT. ON-SITE ASSISTANCE BY OUR TECHNICAL STAFF IS ESSENTIAL.

ONE ITEM OF PARTICULAR INTEREST IS A REQUEST TO BEGIN A THREE-YEAR OFFICE AUTOMATION PROGRAM AT THE ADMINISTRATIVE OFFICE. THE EQUIPMENT REQUESTED WILL SIGNIFICANTLY IMPROVE EFFICIENCY AT THE ADMINISTRATIVE OFFICE. CURRENTLY, MANY MICROCOMPUTER AND WORD PROCESSING SYSTEMS IN THE AGENCY ARE NOT COMPATIBLE AND A GREAT DEAL OF MATERIAL MUST BE DUPLICATED AND REFORMATTED WITHIN AND BETWEEN OFFICES. JUST AS THE COURTS REQUIRE OFFICE AUTOMATION EQUIPMENT TO SERVE THE PUBLIC AND THE BAR EFFICIENTLY, SO TOO DOES THE ADMINISTRATIVE OFFICE REQUIRE SIMILAR EQUIPMENT TO RENDER EFFICIENT, EFFECTIVE SERVICE TO THE COURTS.

AS I MENTIONED EARLIER, OUR CENTRAL ACCOUNTING AND PAYROLL SYSTEMS ARE JUST BARELY BEING KEPT TOGETHER. WE HAVE BEGUN DEVELOPMENT ON A NEW ACCOUNTING SYSTEM, BUT DO NOT HAVE THE FUNDS FOR THE COMPUTER ON WHICH IT WILL RUN. THE $1,200,000 REQUESTED FOR THE COMPUTER AND $200,000 FOR CONTRACTUAL ACCOUNTING SYSTEM SUPPORT WILL ALLOW US TO PLAN TO PUT THE SYSTEM ON-LINE IN 1989. THE $300,000 IN CONTRACTUAL SERVICES FUNDS REQUESTED FOR OUR PAYROLL SYSTEM WILL PROVIDE THE RESOURCES NECESSARY TO BEGIN REPLACEMENT OF A SYSTEM THAT IS OVER 13 YEARS OLD AND INCREASINGLY PRONE TO FAILURES AND INEFFICIENCIES.

MR. CHAIRMAN, A SERIOUS PROBLEM HAS DEVELOPED WITH CERTAIN PROGRAMS FOR WHICH FUNDS WERE REQUESTED IN THE PAST BY THE ADMINISTRATIVE OFFICE FOR SUPPORT OF COURT FUNCTIONS. THESE PROGRAMS IN THE COURTS HAVE GROWN SUBSTANTIALLY, BUT THE ADMINISTRATIVE OFFICE HAS NOT RECEIVED ADEQUATE FUNDING TO KEEP UP WITH THAT GROWTH.

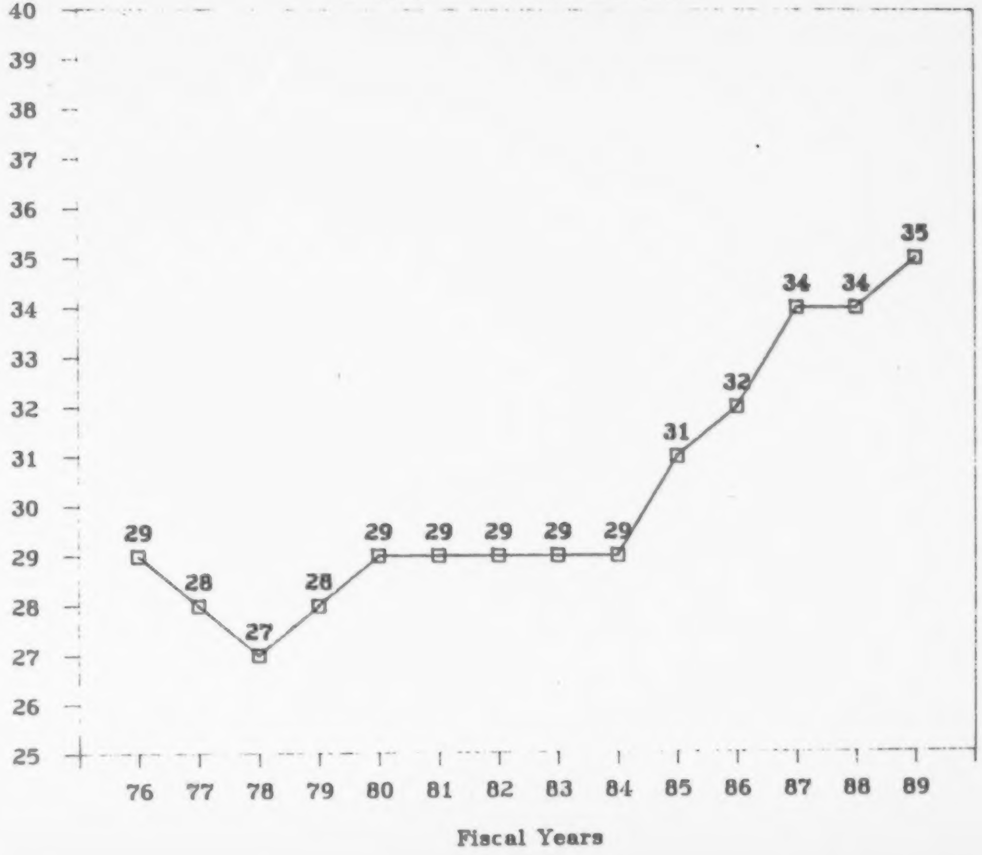
ONE EXAMPLE IS THE BANKRUPTCY AUTOMATED NOTICING SYSTEM (BANS). IN ALMOST ALL COURTS, EITHER A CONTRACTOR OR THE COURT EMPLOYEES THEMSELVES SEND NOTICES TO CREDITORS OF PERSONS WHO

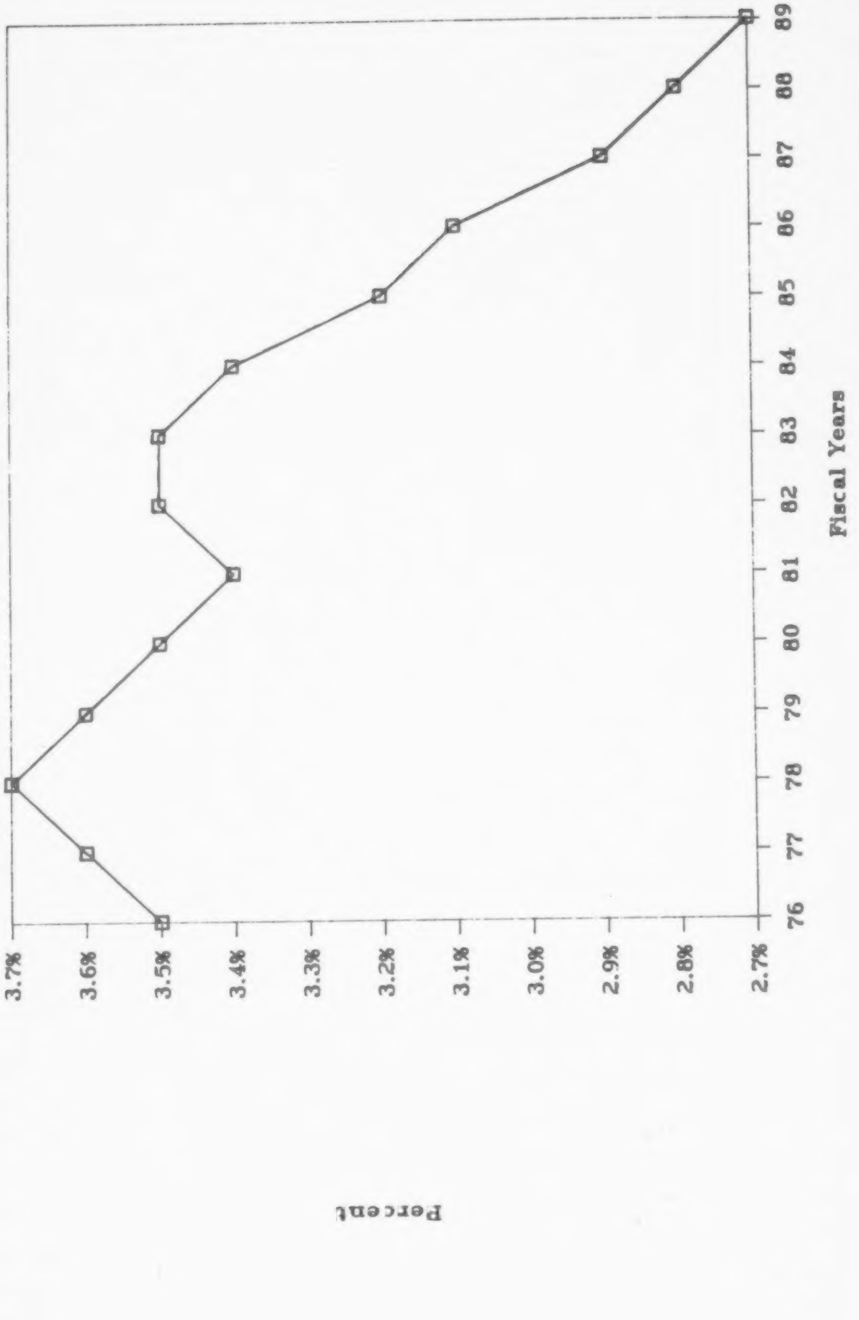
HAVE FILED FOR BANKRUPTCY. HOWEVER, FOR 16 LARGE COURTS, THE NOTICES ARE PRODUCED AND DISSEMINATED CENTRALLY USING ADMINISTRATIVE OFFICE COMPUTERS AND STAFF. WHEN THE BANKRUPTCY CASELOAD GOES UP, THE WORK MEASUREMENT FORMULAS TAKE INTO ACCOUNT SUCH INCREASES, AND THE BANKRUPTCY COURTS RECEIVE ADDITIONAL STAFF. THERE IS NO SUCH ADJUSTMENT FOR THE STAFF PRODUCING AN INCREASED VOLUME OF NOTICES AT THE ADMINISTRATIVE OFFICE. WHEN ADDITIONAL STAFF IS REQUIRED TO PRODUCE AND MAIL THE NOTICES, THIS PROGRAM ENDS UP TAKING ADMINISTRATIVE OFFICE RESOURCES AWAY FROM OTHER PRIORITIES. THERE ARE OTHER AREAS WHERE THIS PROBLEM OCCURS AND WE WILL MEET WITH YOUR COMMITTEE'S STAFF TO DISCUSS PROPOSALS FOR ITS RESOLUTION.

THANK YOU, MR. CHAIRMAN, FOR THE OPPORTUNITY OF PRESENTING OUR REQUEST FOR ADDITIONAL FUNDING. I WILL BE PLEASED TO ANSWER ANY QUESTIONS YOU OR YOUR COMMITTEE MAY HAVE, AS WELL AS TO PROVIDE ANY ADDITIONAL INFORMATION YOU MAY REQUIRE.

AVERAGE NUMBER OF JUDICIARY PERSONNEL

SERVED BY ONE AO EMPLOYEE



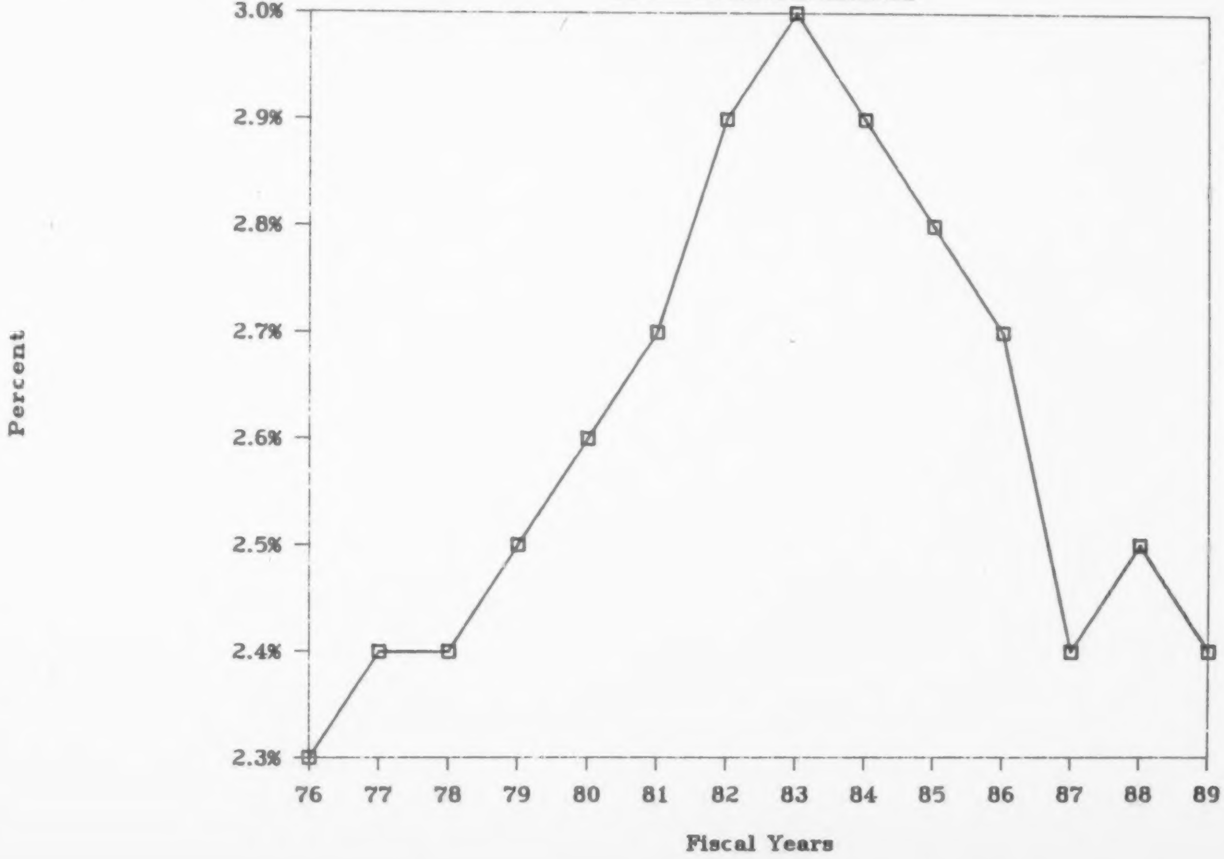


COMPARING AO PERSONNEL GROWTH (PERCENT)

TO THE TOTAL JUDICIARY

COMPARING AO BUDGET AUTHORITY (PERCENT)

TO THE JUDICIAL BRANCH



SUPREME COURT OF THE UNITED STATES

[CLERK'S NOTE: Subsequent to the hearing, the following statement was received from Justice Sandra Day O'Conner on behalf of the budget requirements of the Supreme Court. At the direction of the chairman, the statement has been printed in the record.]

PREPARED STATEMENT

Justice Sandra Day O'Connor
Supreme Court of the United States
March 25, 1988

To the Senate Appropriations Subcommittee:

I appreciate this opportunity to submit to your Committee a statement concerning the budget requirements of the Supreme Court for the fiscal year 1989.

As usual, the budget request is divided between the Salaries and Expenses of the Court and Care of the Building and Grounds. The total fiscal year 1989 budget for Care of the Building and Grounds is $2,384,000. My statement will be limited to the Salaries & Expenses of the Court. Mr. George White, Architect of the Capitol, will submit a statement to the Subcommittee regarding his segment of the total budget.

Our total fiscal year 1989 budget estimate for Salaries and Expenses is $16,448,000. This is an increase of $800,000 over the budget authority for 1988, as adjusted to reflect a proposed supplemental appropriation for salary costs, including health benefits and the Federal Employees' Retirement System (F.E.R.S.). If we exclude the base adjustments in our budget request, the actual increase in the budget authority for Court operations in 1989 is $286,000 more than in 1988.

This increase of $286,000 includes four program changes which we are proposing for fiscal year 1989. We are resubmitting our request for an additional $100,000 to fund the cost of the compact shelving project in the Supreme Court Library. You will recall that this item was cut from the Court's fiscal year 1988 request. The project is essential to solve the storage problem we are experiencing due to the inevitable growth in our Library collection. An additional $96,000 is requested to fund the purchase of modular furniture units for the new computer equipment we have installed in the Clerk's Office. Furniture designed for computer work stations is essential to facilitate efficient use of a new Case Docketing System. The sum of $40,000 is requested to fund the conversion of Atex computer terminals in the Justices' Chambers to multi-purpose terminals. This conversion will reduce average annual equipment costs by approximately $25,000, and at the same time, permit the Atex terminals to be used for legal research of the Lexis and Westlaw databases, as well as for word processing and opinion drafting. Finally, $50,000 is requested to fund the Supreme Court observance of the Bicentennial of the Judiciary Act of 1789. The Court's observance will be educational in nature, and will include a special exhibit and pamphlet for the benefit of visitors to the Court.

The details and justifications for these items appear on pages 1.7 through 1.9 of our budget submission.

I also would like to comment on the condition of our fiscal year 1988 budget. The Court's 1988 budget request of $16,041,000 was reduced by $141,000 by the Appropriations Committees, and then further reduced by $653,000 in the summit agreement between Congress and the President. Our final appropriation of $15,247,000, for fiscal year 1988 was $266,000 below the fiscal year 1987 Budget Authority, and a mere $24,000 above our actual obligations for fiscal year 1987.

This has put a very serious strain on the operations of the Court during the current fiscal year. Because of the need to cover fixed costs such as salaries and benefits, equipment maintenance, telephone, postage, and the printing of the Supreme Court Reports, we have drastically curtailed planned spending in other areas. For instance, we have eliminated the hiring of summer temporary employees, and the purchase of microforms in the Court's library. We have not been able to make equipment purchases, and expenditures for needed supplies. Training and travel have been sharply reduced. These reductions have been made in order to simply meet our fixed costs. 79% of the Court's budget is for salaries and benefits. 93% of our budget represents fixed costs and expenses. We have virtually no flexibility in the budget we are requesting. For these reasons, it is exceedingly important that the Committee support our request for a Supplemental Appropriation to cover our increased pay costs, health benefits and F.E.R.S.

This concludes a brief summary of our request. We will be happy to respond to any questions that the members of the Committee may have.

STATEMENT SHOWING CASES FILED EACH TERM; CASES TERMINATED AND CARRIED OVER TO NEXT TERM

(October Term 1987 - Corresponds with Fiscal Year 1988)

Term	Case Filings During Term	Carried Over From Prior Term	Total Cases on Docket	Breakdown of Cases on Docket (Orig. & Paid)	(In Forma Pauperis)	Total Cases Disposed of	Total Cases Not Disposed of
1960	1957	356	2313	1058	1255	1928	385
1965	2802	482	3284	1453	1831	2693	591
1970	3419	793	4212	1923	2289	3422	790
1975	3940	821	4761	2366	2395	3806	955
1980	4174	970	5144	2773	2371	4255	889
1981	4422	889	5311	2957	2354	4433	878
1982	4201	878	5079	2727	2352	4009	1070
1983	4222	878	5100	2706	2394	4131	969
1984	4047	959	5006	2590	2416	4261	745
1985	4413	745	5158	2581	2577	4290	868
1986	4240	883	5123	2559	2564	4349	774
1987*	4626	774	5400	2700	2700	4600	800

STATEMENT SHOWING CASES ARGUED, DISPOSED OF BY OPINION AND CASES REVIEWED AND DECIDED WITHOUT ARGUMENT DURING TERM OF COURT

	Cases Granted			
Term	Argued This Term	Disposed of by Opinion	Cases Reviewed and Decided without Argument During Term	Cases Granted Review During Term
1960	148	147	N/A	137
1965	131	130	103	156
1970	151	148	192	161
1975	179	176	184	172
1980	154	152	122	183
1981	184	170	126	201
1982	183	174	119	179
1983	184	174	81	149
1984	175	159	73	185
1985	171	161	106	187
1986	175	174	109	167
1987*	166	163	110	170

*Projection for Full Term (as of December 31, 1987)

SUBMITTED QUESTIONS

Senator HOLLINGS. We will be speaking with you about that statement and what we can get done.

I know that Senator Rudman is very sympathetic and very supportive. It is just that we got voted down in December. I didn't vote for this. I would rather pay the bills and get an orderly process here.

Written questions for the record from Senators Hollings and Bumpers follow:

[The following questions were not asked at the hearing, but were submitted to the Judiciary for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

FILING FEES

Pre-1979 filing fees in Chapter 7 and 13 bankruptcy cases were set at $50 per person -- a couple filing for bankruptcy paid $100. Post-1979, the fee was set at the same rate as the court filing fee -- $60 -- but this fee covered either a single person filing or a couple (a $40 decrease in fees). In 1986, the fee was raised to $90. Thus, an increase in the fee to $100 would only reflect what the fee was pre-1979. An increase to $120 would reflect the same filing fee as exists for a civil case today.

Question. What amount of revenue would be raised if the filing fee in Chapter 7 and 13 bankruptcy cases was raised to $100? And, $120?

Answer. If filing fees for Chapter 7 and Chapter 13 bankruptcy cases were raised from $90 to $100, the additional revenue would total approximately $6 million.

If raised from $90 to $120, the additional revenue would total approximately $18 million.

Question. Has the Judicial Conference taken a position on additional increases in filing fees?

Answer. Although the Judicial Conference has not yet taken a position on the matter, consideration is being given to recommending raising filing fees and identifying other kinds of court user fees which may help pay some of the increasing costs of operating the court system.

FUNDING LIMITS

On November 30, 1987, the Congressional Leadership and the Administration agreed to specific budget levels for fiscal year 1988 and fiscal year 1989. The so-called Summit Agreement placed a cap on fiscal year 1989 domestic discretionary spending, allowing for only a two percent increase above the fiscal year 1988 level of funding. The agreement also stated that no supplemental requests would be approved, except in the case of a dire emergency, with the understanding that any such requests would be offset by a reduction in funding elsewhere.

Question. What activities would be curtailed if the Judiciary did not receive any supplemental funding in fiscal year 1988?

Answer. Without this supplemental amount, we could barely fund current levels of obligations. Court staffing, which recently was increased by the fiscal year 1987 supplemental allowance, and brought the staffing level to 97 percent of work measurement formula allowances, would drop back to about 94 percent as the year progressed and caseloads rose. The courts have struggled for over two years under these reduced staffing allowances, and services to the public and the Bar have deteriorated. There are increased delays in all phases of the judicial process, from adequacy of responses to requests for information, to filing, docketing, and closing cases. For instance, many thousands of cases in the bankruptcy courts have been fully administered but cannot be closed and dismissed because of staff shortage.

Beyond staffing problems, the courts would not be able to provide needed automation equipment installations, or training and support for the users. Space alterations, chronically under-funded, would fall even further behind, and no funds will be available for furniture replacement where needed.

In addition to increased pay costs authorized by Congress which we have to meet, the program supplemental request for $14 million is required for three main purposes: the impact of new sentencing guidelines mandates the addition of 180 probation positions to handle the more complex workload associated with defendants sentenced under these guidelines; the addition of 52 bankruptcy judgeships in fiscal year 1987 requires a substantial Judiciary investment to alter space for chambers and hearing rooms; and, finally, for increased FTS costs and postage usage.

If this supplemental is not approved, the additional probation personnel will not be hired as needed, and the existing staff will be hard-pressed to complete its presentence reports in a timely manner. The workload is already beginning to materialize, as probation officers have reported that they are now investigating a number of cases under the guidelines.

Regarding alterations for bankruptcy judges' chambers, this work is necessary and cannot be deferred. Without the supplemental, we would have to divert funds from other critical areas, further eroding daily operations in the courts.

Question. What activities would be curtailed if the Judiciary's fiscal year 1989 request for a 30 percent increase in funding was held to a two percent increase over fiscal year 1988?

Answer. Most of the 30 percent increase requested is needed to pay for positions and programs which were authorized prior to 1989 or are needed to staff courts at 100 percent of their personnel requirements. We are requesting only a 3 percent increase to fund projected increases in caseload. Also, the $43,000,000 requested for automated systems is sorely needed to improve services, and the $18,000,000 requested for salary modification is needed to maintain employee morale.

The certain impact of the Judiciary's being forced to operate at a two percent increase over fiscal year 1988 would be that the court system would slow down markedly. Staffing in the clerks' offices would fall to 85 percent of the projected requirement, which would completely degrade services to litigants, the Bar, and the public. Fewer cases would be processed in a timely manner, let alone docketed and calendared when they should. Further, funds for the general operation and maintenance of the courts, even with the estimated filing fees to be credited to the account, would be reduced about $12 million below the 1988 level, which would mean that, in all probability, virtually no funds could be spent on furniture or replacement equipment. Regarding space rental charges, there would not only be insufficient funds to pay for anticipated needs in 1989, but there will be space acquired during 1988 for only part of the year which then could not be funded for all of fiscal year 1989.

FEDERAL EMPLOYEE RETIREMENT SYSTEM (FERS)

Question. How much of the $27.5 million in supplemental funds requested for pay-related costs goes to make contributions to the new Federal Employee Retirement System (FERS)?

Answer. The sum of $9,243,000 is included in the courts' supplemental for FERS contributions.

Question. Does this amount accurately reflect your estimated response to the new plan?

Answer. Yes, it is a current estimate for fiscal year 1988 requirements.

Question. Many Government departments overestimated the impact of FERS on their budgets because the Office of Management and Budget had overestimated the number of Federal employees that would change to FERS. How do you develop your FERS estimates? Could your request also be overestimated and, thus, reduced below your request?

Answer. The FERS "Open Season" for switchers from the Civil Service Retirement plan ended on December 31, 1987. Because we purposely delayed filing our request until the supplemental, we were able accurately to assess both the number of employees switching into this new system, and those already covered under FERS due to employment in the government only since 1984. Most recent information indicates that the request is not overestimated.

STAFFING

Your fiscal year 1989 budget requests an increase of $116.4 million to allow you to staff all offices up to 100 percent of the work measurement formulas. You have been operating at less than 100 percent for a number of years.

Question. Why are you restoring staffing to 100 percent of formula during these times of severe fiscal constraint?

Answer. A 94 percent staffing limitation was instituted by the Judicial Conference as an emergency short-term measure in response to Gramm-Rudman-Hollings. Staffing limitations have remained in effect involuntarily because sufficient positions and funds have not been made available to staff at 100 percent of formula.

Question. How has your "understaffing" affected the Judiciary's ability to perform its work in years past?

Answer. As a result of funding deputy clerk positions below 100 percent of the workload formula, there are increased delays in all phases of the judicial process from adequacy of responses to requests for information, to filing, docketing, and closing cases. The bankruptcy courts have the most serious problem because their caseloads have experienced such dramatic increases. Many thousands of cases in the bankruptcy courts have been fully administered but cannot be closed and dismissed because of staff shortage. As a result of the failure to close these cases in a timely manner, trustees are not receiving their statutory fees for services rendered. Many trustees have indicated they are no longer willing to serve as a result of this delay in payments, thereby further diminishing the effective administration of the bankruptcy system.

In the short run, the courts have been able to defer some functions. Over a period of time, however, deferring items such as training, preparing procedures manuals, and closing cases take a toll on the productivity and efficiency of a court.

Lack of adequate staffing also has delayed automation of the courts. This in turn slows down the operational improvements attendant on the new technology.

We therefore request that additional deputy clerk positions be provided so that clerks' offices can again perform all of their duties.

Question. When did you last update the work measurement studies that this budget is based on? Are they still accurate?

Answer. The district court clerk's office work measurement study was completed in December 1981, and the bankruptcy court clerk's office work measurement study update was completed in December 1984. Court of appeals clerk's office staffing is based not on a work measurement staffing study, but on a ratio of 75 appellate filings per deputy clerk approved by the Judicial Conference in the early 1970's.

There have been many changes in the workload of clerks' offices since these staffing formulas were developed. For example, in the district courts the clerks' offices have been assigned increased responsibilities in procurement, case monitoring, and increased requests for case information from judges, the Bar, and the public. In the bankruptcy courts, massive Chapter 11 cases have become more common in many of the courts, but the staffing formula currently provides no additional credit for such cases. The implementation of automated systems in the courts also have contributed to making the present formulas out-of-date.

POSITION RECLASSIFICATIONS

In your budget submission, you request an increase of $18.1

million for the reclassification of pay scales for six types of positions within the court system.

Question. While there is justification for increasing salaries in certain high-cost jurisdictions; during these times of austere budgets, has the Judicial Conference reviewed alternative ways to maintain competitive wages on a district-by-district basis?

Answer. No, not to date.

PROBATION/PRETRIAL SERVICES

Over 40 percent of the resources to implement the new sentencing guidelines are going into probation offices.

Question. What is the role of the probation officer in implementing the guidelines?

Answer. The sentencing guidelines require probation officers to assume new responsibilities and duties. Implementation of the guidelines will increase substantially the length of sentencing proceedings and the complexity and scope of the presentence report. Specifically, officers will be required to spend more time on tasks related to the investigation of relevant facts, preparation of reports, and active participation in the sentencing hearings process. The guidelines require probation officers to include a review of the offense committed by an individual and the nature of the individual's prior criminal history. Each offense contains various specific characteristics which are to be given numerical values by the probation officer. The prior criminal history is weighted according to past sentences imposed with various rules related to the time period when these sentences occurred. The probation officer's application of the various rules related to these items results in a range of custody time, a period of supervision, and fine or restitution requirements which serve as the estimated guideline for courts to follow in sentencing a defendant.

Question. Are any pretrial officers performing the same duties as probation officers under the sentencing guidelines, or are the expanded duties limited to probation officers?

Answer. Pretrial services personnel are not directly affected by the sentencing guidelines, and their duties are not expanded as are those of the probation office.

Question. Are pretrial personnel included in your $5.5 supplemental request?

Answer. Only probation office personnel are included.

Public Law 93-619, the Pretrial Services Act of 1982, established the policy that pretrial services should be provided through independent agencies in Metropolitan Courts. Unfortunately, by definition, that includes my Court in South Carolina which is classified as a Metropolitan Court, even though the state is of largely rural makeup.

Question. Have you had any success in working out an arrangement whereby metropolitan district courts which are essentially located in non-urban settings can provide pretrial services without having to establish separate agencies?

Answer. The Pretrial Services Act of 1982 did not specifically require the establishment of independent offices in metropolitan courts; however, the report accompanying the appropriation bills in 1985 and 1986 allowed the allocation of personnel to perform pretrial services to metropolitan courts only when those courts created an office separate from probation offices. The Chairman of the House Subcommittee on Crime, who has a great interest in this matter, has agreed to a proposal by the Administrative Office whereby the District of South Carolina, the Eastern District of Texas, and the Western District of Louisiana would be exempt from the metropolitan district rule. Those districts, because they fit the description of courts in non-urban settings will be provided with probation staff to perform the pretrial services functions.

DEFENDER SERVICES

You are requesting a $57.7 million -- or 62 percent -- increase in the Defender Services account during fiscal years 1988 and 1989 based, in part, on the impact of the new sentencing guidelines.

Questions. How accurate is the fiscal year 1989 request since the fiscal year 1987 budget was apparently overestimated and resulted in a $9.5 million carryover? In connection with your 1988 supplemental, did the Judiciary not offer up savings in the account last year? And, testimony from last year's record indicated that you expected a leveling off in Defender Service increases in the future. Please explain the rationale in support of this increase in the Defender Services account.

Answer. Initially, we note that our fiscal year 1988 budget included a $9.5 million carry-forward. Thus, our fiscal year 1989 request is 46 percent ($43,215,000), rather than 62 percent ($52,175,000), over our fiscal year 1988 budget authorization. If our fiscal year 1988 supplemental request is included in this calculation, the percentage increase in fiscal year 1989 would be approximately 30 percent.

The Defender Services appropriations have always reflected our best estimates based on a combination of all relevant factors. In fiscal year 1987, we received an $18,000,000 supplemental as part of the "Omnibus Drug Supplemental Appropriation Act of 1987." The projected carry-over of funds from fiscal year 1987 to fiscal year 1988 is due to the fact that the expected increase in drug appointments upon which the need for fiscal year 1987 supplemental funding was based did not materialize to the extent that had been predicted. Our projections for 1989 are predicated on our most accurate assessment of the various factors which will impact on the appropriation, including the new sentencing guidelines.

The Defender Services appropriation request for fiscal year 1988 was $98.3 million. The approved appropriation was only $85.1 million. However, by adding our $9.5 million carry-forward from fiscal year 1987 to this amount, a total of $94.6 million is available for use in fiscal year 1988, which would have covered all of our requirements. Our request for $9.9 million supplemental funding for fiscal year 1988 (excluding pay cost and FERS supplementals), is to cover costs beyond those contemplated in our original $98.3 million fiscal year 1988 request. As set forth in our fiscal year 1988 supplemental budget request justification, those costs arise out of the November 1, 1987 implementation of sentencing guidelines and the need to respond to the influx of habeas corpus proceedings initiated by persons who have been sentenced to death.

The requested increase for Defender Services in fiscal year 1989 is based upon three significant developments: (1) implementation of the Sentencing Reform Act of 1984; (2) an expected dramatic increase in the number of habeas corpus petitions filed by state prisoners who have been sentenced to death; and (3) implementation of rate increases in judicial districts where, pursuant to the Criminal Justice Act revision of 1986, the Judicial Conference is expected to establish alternative hourly attorney compensation rates. These developments individually and in combination produce a major impact on the cost of providing assigned counsel under the Criminal Justice Act.

INCREASED WORK FROM SENTENCING GUIDELINES

About $7.4 million of the $35.3 million you are requesting is due to the additional time probation officers will have to spend on pre- and post-sentence investigations because of the new sentencing guidelines. Funding for this additional workload is also included in your supplemental request for 1988 (p. S88.13). That request amounts to about $4.1 million and includes, among other things, the planned acquisition of 500 personal computers which will run specially developed software to assist the probation officers in applying the guidelines.

Question. Is it true that it is the probation officers who have the responsibility of figuring out what the appropriate sentencing range ought to be for each defendant?

Answer. Yes. Rule 32(c)(2)(B) of the Federal Rules of Criminal Procedure requires that a presentence investigation and report contain:

> "The classification of the offense and of the defendant under the categories established by the Sentencing Commission pursuant to section 994(a) of Title 28, that the probation officer believes to be applicable to the defendant's case; the kinds of sentence and the sentencing range suggested for such a category of offense committed by such a category of defendant as set forth in the guidelines issued by the Sentencing Commission pursuant to 28 U.S.C. Section 994(a)(1); and

> an explanation by the probation officer of any factors that may indicate that a sentence of a different kind or of a different length from one within the applicable guideline would be more appropriate under all circumstances."

Question. What percentage of the sentence computations will be done by hand? Will these be as accurate as those done by computer? Why?

Answer. We estimate that approximately 75-80% of all guideline computations will be done by hand since in the majority of districts only one personal computer, which was provided by the Sentencing Commission, is available on which to run the computer-based sentencing computation program. We anticipate the work performed by hand would be completed as accurately as possible. In a given case, since the guideline application process would be done a minimum of three times (the officer's initial computations, revisions following disclosure of the presentence report to the defense and prosecution, and a final recording following sentencing), errors in recopying and recalculating could occur regardless of the fact that officers proceed carefully. On the other hand, working through the scoring process with the assistance of the computer program allows for the copying of information once entered; and if adjustments are made at various points, all related calculations are changed accordingly. Further, the application software has reminders built into it as to salient factors that must be considered in a particular calculation. Each of these aids contributes to the overall integrity of the guideline application process.

Question. On the average, how much time will it take to compute sentences on the computer?

Answer. Our current estimates, based on limited experience, suggest a range of 10 minutes to 45 minutes. At the low end of the continuum are those cases where the offense behavior can be easily interpreted within the guidelines -- for example, a single count indictment or several counts where monies involved can be aggregated -- and the offender has no or limited prior record. At the opposite end are those cases having complicated, multiple counts which cannot be aggregated and/or where defendants have a significant prior record that must be carefully analyzed even as it is entered into the computer program. On the average, 20 minutes per case seems a reasonable estimate. As noted previously, however, calculations are done at least three different times in the presentence investigation and disclosure process.

Question. Without the installation of additional computers in probation offices, will the Sentencing Commission be able to obtain comprehensive, accurate monitoring data in a timely fashion?

Answer. Traditionally, the Federal Probation System has responded well to whatever tasks have been requested. We would expect data collected by other than personal computers to be as accurate and complete as humanly possible. However, if the greater portion of the data are being collected manually, in the absence of adequate numbers of computers, considerable effort will need to be expended to coordinate transmitting that information. A related concern is that these data must then be entered into the central database by a separate operation, that a sizeable data entry burden and backlog will soon develop, and this will adversely affect the timeliness and reliability of the central database.

DRUG AFTERCARE PROGRAM

You are requesting $16 million or about $1,000 per drug dependent offender for your drug aftercare treatment program.

Question. How successful is this treatment program? Are any participating offenders released from probation without successfully completing the program? What are the criteria for successful completion?

Answer. The Probation Division of the Administrative Office of the U.S. Courts studied the profile of 3,991 persons under supervision who were discharged from treatment between April 1984 and January 1986. Slightly over 50% (1,999) met the criteria for successful completion of the program.

Persons who are not successful in completing the treatment programs are returned to court or to the Parole Commission for further action. This may result in incarceration or placement in a more stringent treatment or supervision program.

The criteria to determine successful completion, in the 1984-86 study, were: freedom from continued drug use, rearrest, and other violations of the terms of supervision which would have caused action by the court or Parole Commission. The following is a table reflecting the types of termination from drug treatment:

TYPE OF TERMINATION

	Clients	Percent
Satisfactory	1,999	50.1
Unsatisfactory	1,941	48.6
Continued Drug Abuse	(1,318)	(33.0)
Other Violations	(289)	(7.2)
Rearrest	(334)	(8.4)
Death	51	1.3
TOTAL	3,991	100.0

We believe the drug aftercare program is successful, particularly when viewed within the context of the clients studied. On average, their onset of drug usage occurred 11 years prior to entry in the drug aftercare program. Fifty percent previously had been in treatment in other programs, and of those, 23% had been in programs utilizing methadone. By all measures this is a difficult and high risk population.

Question. Do you have any information or studies on the number of persons who successfully complete your aftercare program and remain drug dependency free?

Answer. We do not have any studies or information on persons who have completed the treatment programs and who later revert to drug use. Ordinarily, we would conduct periodic testing of these individuals through the end of their supervision and return them to treatment if there is a relapse. However, once the probation or parole supervision has expired, we have no legal authority to provide follow-up. Two studies have been completed on the drug program by the Federal Judicial Center using data on cases under supervision of Federal Probation. "A Process-Descriptive Study of the Drug Aftercare Program for Drug-Dependent Federal Offenders" was published in 1984, and "The Impact of the Federal Drug Aftercare Program" in 1986.

CIRCUIT EXECUTIVES

There has been concern expressed that the twelve circuit executives have not been included with the magistrates and bankruptcy judges in your request for increased pay.

Question. Haven't these three executive levels been tied together in the past?

Answer. No. Moreover, while at times in the past the salaries of magistrates and bankruptcy judges may have been coincident with one executive level or another, they have not been set in permanent statute until recently at any particular executive level or fraction thereof.

Over the years, the three salaries have been in widely varying relationships with one another, the only constant being that the Judicial Conference has been on record consistently that the salaries of magistrates and bankruptcy judges (formerly referees in bankruptcy) ought to be on a par.

Regarding the relationship of circuit executives with the other two positions, the Judicial Conference has viewed their relationship from the perspective of the law in effect at the time. At its March 1971 session, prior to the Bankruptcy Reform Act and the Magistrates Improvement Act, the salary of circuit executives was viewed as appropriate at a higher level. Since that date, the Judicial Conference has altered its view, in consideration of changes in law.

Question. What consideration has been given to increasing circuit executive classification from level V to level IV?

Answer. The Judicial Conference went on the record at its September 1987 session in favor of the amendment of 28 U.S.C. 322(f) to provide for raising the statutory cap to level IV.

Recently, Judges Hunter and Bilby testified in support of the Conference's position before the Subcommittee on Courts and Judicial Practice.

Question. How much would it cost to make such a change?

Answer. The increased cost would be $72,000 ($60,000 in compensation and $12,000 in benefits) on an annual basis or $18,000 for the remainder of fiscal year 1988 assuming the change is authorized by the beginning of the fourth quarter.

Question. Can the Judiciary absorb the cost of this change?

Answer. Yes. The additional expense can be absorbed.

RESPONSIBILITY FOR JUDICIAL SECURITY FUNDS

This appropriation provides for the expenses of security and protective services for the U.S. Courts and adjacent areas. Funds are transferred to the U.S. Marshals Service which is responsible for administering elements of the judicial facility security program.

Question. How much of the funds requested (about $57 million) for 1989 will be expended by the Marshals Service? How much by the Judiciary?

Answer. The United States Marshals Service (USMS) will expend all of the $57 million to fund the requests from the District Court Security Committees for their security needs.

Question. What is the relationship between that portion of your $57 million request that will be transferred to the Marshals Service and the $33.6 million which the Service is requesting for judicial security? Why not include the funds in one request, i.e., in either the Judiciary's or Service's budget?

Answer. The $57 million transferred to the USMS is for the physical security needs of the 94 districts as recommended by their Court Security Committees. The security requests are evaluated by the USMS experts, then recommended to the Administrative Office of the United States Courts for final approval and funding.

The $33.6 million requested by the USMS is for personal and courtroom security to maintain the integrity of the judicial process. The USMS evaluates security risks and plans appropriate responses to ensure a safe environment for all judicial members and participants. These funds are used to provide deputy U. S. Marshals in courtrooms; to transport prisoners between local jails and the courts for court proceedings; to provide personal protection details for threatened judicial officers and employees; to provide security specialists who develop security planning; and for analyses and evaluation of information related to threats and high risk proceedings.

The funds are requested in separate budgets to best obtain and accomplish each agency's authority and responsibilities.

Question. Are there any other funds in your budget request or anyone else's request for judicial security? If so, please identify and explain why they are separate from your request or the Service's request.

Answer. In addition to the Judiciary's request for physical security and the USMS request for personal and courtroom security, the General Services Administration requests funds for general building protection. These agencies' security responsibilities are actually quite different and distinct.

Question. Who has the final say on judicial security - is it the Marshals Service or the Judiciary?

Answer. The Judiciary has the authority, under 28 U.S.C. 569, to require the presence of a U.S. Marshal at any court proceeding where courtroom protection is concerned. Each district, however, has a District Court Security Committee comprised of both members from the Judiciary and the Marshals Service. Generally, issues on Judiciary security are resolved in these committees.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

FUNDING LIMITS

Question. On November 30, 1987, the Congressional Leadership and the Administration agreed to specific budget levels for fiscal year 1988 and fiscal year 1989. The so-called Summit Agreement placed a cap on fiscal year 1989 domestic discretionary spending, allowing for only a two percent increase above the fiscal year 1988 level of funding. The agreement also stated that no supplemental requests would be approved, except in the case of a dire emergency wherein such a request would be offset by a reduction in funding elsewhere. What activities would be curtailed if the Administrative Office did not receive any supplemental funding in fiscal year 1988?

Answer. If the 1988 supplemental is not approved, a hiring freeze will have to be put into effect and emergency replacement of equipment will not be possible. Travel, which has already been reduced by 25 percent, will have to be further reduced. Our staff, which is spread too thin even at this point, would only be able to provide basic administrative services to the courts. Our space management staff, computer site preparation and installation staff and audit teams, who must travel to do their work, would not be able to travel to the courts and will, therefore, be unable to render the services which are expected of them by the courts. A total of 69 positions, or over 10 percent of authorized positions, will have to be kept vacant until the end of the fiscal year.

Question. What activities would be curtailed if the Administrative Office's fiscal year 1989 request for a 24 percent increase in funding was held to a two percent increase over fiscal year 1988?

Answer. If the Administrative Office was limited to a two percent increase in 1989, the only item that would be funded would be the two percent pay increase that was effective in January 1988. Vacancies would have to be held to the current level or lower and no new positions could be filled. All of the automation requested for the Administrative Office would not be able to be installed, including the office automation program and the computer for the central accounting system. A hiring freeze would have to be in effect and all restrictions on travel and equipment instituted in 1988 would have to remain in effect. This means that no new equipment could be obtained, even in emergencies, and that a minimum reduction of $200,000 or 25% in travel will be in place. All inflationary items would have to be absorbed, including the increase of $400,000 for office space rental. The courts would not be able to receive any support services from the Administrative Office for the installation of new computers. A reduction in force may be have to be put into effect if the hiring freeze does not generate enough savings to absorb the severe reduction in the 1989 request. Our operations would continue to be held at the 1987 level without any allowance for cost increases that are beyond our control.

SPACE AND FACILITIES

Question. What is the status of the consolidation of the Administrative Office into one building near Union Station?

Answer. Progress on consolidating the Administrative Office, Federal Judicial Center, and other Judicial Branch agencies is awaiting Congressional action on a bill to authorize the construction of the building.

As you know, S. 1934, which would authorize construction, was introduced in the Senate on December 8, 1987, and hearings were held on February 3, 1988. A companion bill has not yet been introduced in the House, although a general hearing on the need for the new facility was conducted by the House Public Works Committees last fall. With some modest amendments, the bill may be processed by the Senate this Spring. Its future in the House is less certain, but they, too, have been actively engaged in discussions with Senate and Administrative Office staff on amendments to the bill and that bodes well. Appropriated funds will not be required if the present plan is approved by Congress.

Question. Has a timetable been established for construction of a new facility?

Answer. Assuming an authorization bill is enacted in sufficient time to have a groundbreaking in 1988, the building could be completed by 1990.

Question. While hearings have been held on Senator Moynihan's bill, S. 1934, do you anticipate strong objections to utilizing this lot for the Administrative Office?

Answer. No. The Capitol Hill master plan approved by Congress has designated the two lots to be a site for a Judiciary Building. Moreover, Congress approved Public Law 99-229 which directed that a study be made of methods to build and finance a Judiciary Administration Building on the two lots next to Union Station. Some citizen's groups have expressed concern over the proposed height of the building, but we do not anticipate these concerns would prevent the Judiciary from using the building lots.

Question. If the building is constructed, will there be an increase in the number of square feet currently assigned to the Administrative Office?

Answer. There will be a slight increase in the number of square feet currently assigned to the Administrative Office. The increase is the result of two factors -- (1) increased computer space to support the nationwide court automation effort and (2) increased office space to eliminate the overcrowed working conditions of the AO staff. The increase is not large (a maximum of 10-14% for office space) and does not provide for office space in excess of what is normally accepted and needed. It is largely related to the increased office space required for automation equipment.

Question. And, in light of the General Services Administration's (GSA) continual increase in rental charges, will the rental charges per square foot be higher in the new building than the average rate per square foot you are now paying GSA? What guarantee do we have that the rental fee will be comparable to charges the Administrative Office is now paying?

Answer. The Architect of the Capitol's and Secretary of Transportation's report to the Congress, pursuant to P.L. 99-229, on alternatives for the construction of a judiciary office building included comparative rental costs. The rental charge per square foot in the new building would probably average $8.00 - $12.75 on a discounted annual basis, assuming a public-private partnership with private tenants in the building. Legislation currently pending in the Senate would have the Government, not the developer, manage the building that would likely house only Government tenants. Under this scenario, the rental charge per square foot in the new building would probably average $9.25 to $16.00 on a discounted annual basis. The average discounted annual cost of the GSA payment is $11.50 per square foot. The actual rental rate for the new building would be a part of the contract negotiations that would take place after legislation authorizing the building is enacted.

Although there is no guarantee that the rental fee will be comparable to charges the Administrative Office is now paying, indications of the congressional study on the building indicate that an increase would not be likely.

BEAUFORT COURTHOUSE

Question. What is the current status of holding court in Beaufort, South Carolina?

Answer. Beaufort was named a place of holding court by legislation initiated by Senator Hollings which was approved November 14, 1986, Public Law 99-657.

The county plans on building a new courthouse and turning over the old courthouse to the Federal Government for its own use, including holding court. The county has just identified the location for the new courthouse, so construction should start soon, and the transfer of the county courthouse to the Federal Government should take place in about two years.

TRAVEL COSTS

As a result of the Summit Agreement, Congress was forced to hold the line on fiscal year 1988 levels. Consequently, the Administrative Office received an increase of only 5 percent, instead of the 14 percent increase they had requested.

In an attempt to redistribute the allocation received, I understand the Administrative Office's travel account has been significantly reduced and that some divisions will exhaust their funds by June 1988.

Question. How much funding was allocated for travel in fiscal year 1987?

Answer. The sum of $775,000 was allocated for travel in fiscal year 1987.

Question. How much funding was allocated for travel in fiscal year 1988?

Answer. The sum of $604,000 was allocated for travel in fiscal year 1988.

Question. How much has been spent to date?

Answer. As of March 23, 1988, approximately $400,000 has been obligated for travel.

Question. If you do exhaust all of your travel funds by June, how do you propose meeting this shortfall?

Answer. Without supplemental appropriations, the Administrative Office will not be able to meet this shortfall. The space planning staffs will therefore be unable to travel to visit judges for the purpose of working with the General Services Administration in providing courtrooms and chambers, and the automation installation staffs will not be able to travel to the courts to install automated systems or to provide any support to automated systems already in place. In addition, audits of the courts will have to be curtailed, since the Office of Audit and Review will have exhausted its travel allocation and the statistics staff also will be unable to train probation staffs on new statistical systems. The program divisions will find it exceedingly difficult to travel to the courts for the purposes of providing briefings on the sentencing guidelines, habeas corpus proceedings, and to conduct surveys on the need for additional bankruptcy judges and magistrates, and, in all likelihood, will be unable to perform any of these tasks.

QUESTIONS SUBMITTED BY SENATOR BUMPERS

CLAIMS COURT AND VACCINE INJURY COMPENSATION

As you may know, Congress passed amendments to the Vaccine Injury Compensation Act late last year, well after the Judicial Conference began considering its fiscal year 1989 budget request. I understand that the present request does not reflect funding for the increased caseload of the Claims Court due to the Vaccine Injury Compensation Act amendments. In fact, I understand that a new, amended version of the request reflecting the increased load of the Claims Court will be forthcoming.

Question. What is the present budget request for the Claims Court?

Answer. There is no budget request specifically for the Claims Court. Prior to fiscal year 1983, the United States Court of Claims was funded under a separate appropriation. Effective October 1, 1982, the Court was reorganized and became the United States Claims Court, funded through appropriations for the courts of appeals and district courts. The amount transferred to the general appropriations for the courts in 1983 for the Claims Court was $4,189,000, and the Court is now funded from the general appropriation, "Salaries and Expenses."

Question. Am I correct, is the Budget Committee of the Judicial Conference now engaged in a review of the impact of the Vaccine Injury Act Compensation amendments on the Claims Court?

Answer. Yes. The need for additional resources in the Claims Court as a result of the impact of the vaccine cases will be reviewed by the Judicial Resources Committee and the Budget Committee of the Judicial Conference. Their recommendations will then be acted on by the Judicial Conference or its Executive Committee.

Question. When do you expect to complete the review?

Answer. A meeting of the Executive Committee of the Judicial Conference, which would act for the Conference, is being scheduled for early April.

Question. Do you have any preliminary estimates of the increased caseload, and the costs associated with such increases?

Answer. It is estimated that there could be as many as 5,000 retroactive claims in addition to about 1,500 prospective claims per year filed under the Act. The number of potential transfer cases is not known. Firm cost estimates are not yet available, although it is possible that an additional $1.4 million could be required in fiscal year 1988 and $3.4 million in 1989.

COURT SECURITY

The Judiciary is requesting two increases in the area of enhancing court security: (1) $400,000 to create five new positions and establish a Court Security Division in the U.S. Marshals Service; and (2) $10,300,000 for 422 additional Court Security Officers (not Deputy Marshals).

Question. Are the courts now insufficiently protected?

Answer. The courts are not sufficiently protected according to the District Court Security Committee's requests and the United States Marshals Service's (USMS) recommendations. There are 76 facilities housing a total of 114 full-time judicial officers in residence without any security at all. With sufficient funding, the Marshals Service would put court security officers in over 50 of these locations to meet pending requests from court security committees.

Question. What are the chances that in a given trial, a violent incident may occur?

Answer. A violent incident may occur in any trial or proceeding. This program is designed to prevent weapons from entering into judicial areas, thereby minimizing disruption of court proceedings.

The chance of violence in proceedings previously considered safe or routine, for example in bankruptcy courts, is going up. As bankruptcies increase, social unrest and the appeal of sometimes violent fringe groups also increase.

Question. Can you review for us please, what the proposed functions of the USMS Court Security Division will be?

Answer. The request is for reimbursable positions that will form a branch in the existing Court Security Division of the Marshals Service. This branch will be dedicated to contracting for and administering the reimbursable workload for the Judiciary and to provide greater efficiencies in carrying out the mission of this program.

Question. How is your present relationship with the USMS?

Answer. The Judiciary's present relationship with the USMS is one of mutual respect and concern for the protection of the judicial family and participants.

Question. Please review with us the intended use of the proposed 422 Court Security Officers (CSOs). What GS pay scale is used for them -- that, is more or less than a Deputy U.S. Marshal?

Answer. The 422 CSO positions are to be used to bring existing court facilities up to an acceptable level of security and to staff those court buildings which do not now have any protection.

CSOs are guards employed by private contractors who pay competitive wages. CSOs generally earn less than a journeyman

Deputy U.S. Marshal.

EFFECTS OF UNDER FUNDING

Question. If the Congress is not able to come up with the roughly 30% funding increase requested for FY 1989, what impact will these reductions have on court security?

Answer. Any reduction in the requested increase will result in an inability to provide the necessary level of security requested by the District Court Security Committee to ensure the protection of the court family and participants in the judicial process.

Question. What about cases involving public defenders?

Answer. The requested increase for Defender Services in fiscal year 1989 is based upon three significant developments: (1) implementation of the Sentencing Reform Act of 1984; (2) an expected dramatic increase in the number of habeas corpus petitions filed by state prisoners who have been sentenced to death; and (3) implementation of rate increases in judicial districts where, pursuant to the Criminal Justice Act revision of 1986, the Judicial Conference is expected to establish alternative hourly attorney compensation rates. These developments individually and in combination produce a major impact on the cost of providing assigned counsel under the Criminal Justice Act. If our request is denied, we would not be able to pay counsel for all indigent defendants. This would lead to litigation regarding constitutional issues.

Question. What about cases involving the Drug Dependent Offenders Program?

Answer. Curtailing the Drug Dependent Offenders Program would be counterproductive because the defendants eligible for release under the program would remain incarcerated at substantially greater cost to the taxpayers.

Question. What impact will not funding the proposed increases have on the FY 1990 budget request?

Answer. An adequately funded Judiciary helps to ensure that an impartial forum is readily available to our citizenry to adjudicate conflicts. Without a speedy resolution to their problems, the aggrieved suffer still further damage, and this reflects adversely on our system of government. Although it is too early to determine the impact of a budget freeze in 1990 because our 1990 budget requests have not been developed, the Judiciary's staffing budget is zero based and any freeze on appropriations further increases funding needs the following year. The reduction experienced by the Judiciary in the fiscal year 1988 appropriations (Continuing Resolution) is the principal element contributing to the 30 percent increase requested for fiscal year 1989. Furthermore, the Judiciary's workload, represented by increased case filings, criminal defendants, bankruptcy filings, persons under supervision, etc., are all projected to increase in fiscal years 1988 and 1989.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

FIVE PERCENT PERSONNEL

Your fiscal year 1989 request is roughly $10 million over the amount appropriated for fiscal year 1988, and includes 30 new positions, which is roughly five percent. I note that much of the additional personnel and funds will go to further automate the Administrative Office and update the communications system.

Question. Given the tight budget situation that you know Congress faces this year -- a two percent cap on all discretionary spending, is there any way that this automation can be put off at least a year until we can iron out some of the budgetary restrictions? What impact would a two percent increase, as opposed to a five percent increase, have on the Administrative Office's ability to do its job?

Answer. Although some of the funding requested is for automation programs at the Administrative Office, the positions requested will be used to continue automation of the courts of appeals, the district courts, and the bankruptcy courts.

A two percent increase for staffing of our automation operations yields about 5.5 positions, compared to the 14 positions requested. Fiscal year 1989 is a pivotal year for the expansion and implementation of the Judiciary's automation plan. The office automation equipment program will be commencing. This program will result in the replacement of antiquated, incompatible word processing equipment in the courts. The data communications network program will also be starting. This program will provide electronic mail and other communications capabilities to the courts. In addition, the Judicial Conference has set as a priority the automation of docketing systems for the bankruptcy courts, particularly in light of their ever growing caseloads. In 1989, 20 bankruptcy courts are scheduled to receive automated systems.

Without the additional staff, there will not be adequate resources to resolve software problems occurring in the automated electronic docketing systems. These systems have already replaced the manual docketing sheets in some courts. Day-to-day operation of the automated courts is completely dependent upon these systems. There also will be no personnel available for software programming enhancements, systems maintenance or to conduct nationwide systems evaluations and upgrading when necessary.

Significant resources have been devoted to implementation of the Judiciary's long-range Automation Plan. Without the necessary support personnel, the automation program runs the risk of becoming incapable of functioning as a unified nationwide automated case management and statistical system.

An allowance of a two percent personnel increase for the remainder of the Administrative Office means that only about 6.5 positions will be authorized. This number will handle less than one-half of the increased workload which is largely quantifiable and completely predictable. The Administrative Office's nationwide contracting and space planning services will be particularly hard hit by this reduction. Contracts for alcohol and drug treatment services have increased by 43 percent in about two and a half years. The number of contracts for this program alone has increased to nearly 4,000. Lack of sufficient staff to monitor and issue contracts pursuant to the Drug Dependent Federal Offenders Act of 1978 could lead to an inability to comply fully with the Act.

Our facilities staff is at the breaking point now and, with the potential for only 2.4 staff years authorized out of a requested 6 positions, will be hard pressed to plan the space needs of judges and their supporting personnel. Facilities planning has become one of the most critical problems facing the Federal Judiciary and, again, the largely predictable workload will not be accommodated. Increased staffing to the level requested is essential if judges are to receive chambers, courtrooms, and adjunct facilities in an expedient manner.

Similarly, the Administrative Office budget staff finds itself with more work and tighter deadlines. Without the two budget analyst positions requested, it will be difficult to provide quality, timely budget documentation which has been growing greatly in recent years due to budgetary reductions and the need to better manage limited resources. The Administrative Office's efforts to provide systems support to Federal Defender organizations, to install electronic sound recording systems for judges, and to keep up with basic clerical functions would also be affected adversely with only a two percent increase, since only two of the five positions requested for these purposes would be authorized.

QUESTIONS SUBMITTED BY SENATOR RUDMAN

SENTENCING GUIDELINES

Two separate decisions in the Southern District of California [U.S. v. Arnold, No. 87-1279-B (sd Cal. Feb. 18, 1988) and (U.S. v. Manley, No. 87-1290-R (sd Cal. Feb. 18, 1988)] have held the new sentencing guidelines unconstitutional on the basis that the United States Sentencing Commission, which wrote the guidelines, violates the Separation of Powers Doctrine since it is designated as part of the Judicial Branch and three members of the Commission are Federal judges. A third judge in the same district has rejected the conclusion reached in the two previous cases and has upheld the guidelines [U.S. v. Ruiz-Villanueva, No. 87-1296-E (sd Cal. Feb. 29, 1988)].

Question. Has the Ninth Circuit agreed to provide an expedited review of these cases?

Answer. The District Court indicated its willingness to be subjected to quick interlocutory review, but the United States Attorney has not yet filled a notice of appeal or otherwise sought review. We believe no appeal will be filed until sentences are actually imposed. The defendants in these cases had not been convicted at the time of the rulings. When an appeal is filed, the United States may attempt to file it directly in the Supreme Court. If the appeal is filed in the Ninth Circuit, it will be up to that Court to decide whether to expedite it.

Question. If the sentencing guidelines are held to be unconstitutional, will the courts be required to conduct new hearings for all those sentenced under the guidelines?

Answer. Yes, unless special steps are taken to avoid this necessity. District Courts might, for example, hand down two sentences in each case until the validity of the guidelines is finally decided - one sentence under the guidelines, and the other under pre-guidelines law. The latter sentence would be provisional, to take effect in the event the guidelines are struck down in the end.

Question. The Judiciary is requesting $42.1 million in new resources in fiscal year 1988 and fiscal year 1989 to implement the sentencing guidelines (Supplemental request of $12.2 million and fiscal year 1989 increase of $29.9 million). Given the uncertainty of the constitutional challenges to the guidelines, is it premature to be requesting these resources at this time?

Answer. While constitutional challenges are being made to the sentencing guidelines, until a decision is rendered determining that the guidelines are in fact unconstitutional, defendants who are sentenced for crimes on or after November 1, 1987, will presumably continue to be sentenced under the sentencing guidelines. The presence of these cases is growing, and with it the Judiciary's workload is increasing. Therefore, it is not premature for additional resources to be requested at this time.

Question. How do you explain this increase when the United States Attorneys have not indicated a need for any additional resources as a result of the sentencing guidelines?

Answer. Although the United States Attorneys will be affected by the sentencing guidelines, apparently they have not addressed this matter in their fiscal year 1989 budget request. We do not know why. The Judiciary, in any case, requires an increase in its resources to implement the sentencing guidelines because several components of the Judiciary will experience an increase in workload which simply cannot be absorbed. Moreover, the Judiciary has experienced significant reductions in its appropriations, especially for court personnel, since the advent of Gramm-Rudman-Hollings in fiscal year 1986. For example, deputy clerks for bankruptcy, district, and appeals courts and the probation and pretrial services officers have been reduced to operating levels which are 94 percent of staffing requirements. Therefore, the Judiciary requests additional resources to assume its new responsibilities and perform its additional functions under the sentencing guidelines.

DEATH PENALTY HABEAS CORPUS RESOURCE CENTERS

The Judiciary is requesting a $1.9 million supplemental appropriation to establish 19 Death Penalty Habeas Corpus Resource Centers.

Questions.

- Please elaborate on the purpose of the proposed death penalty resource centers as well as the type of services they would perform.
- What is the Judiciary's authority to fund these centers?
- Your justification supports the creation of these centers on the basis of three statements: (1) the private bar has neither the expertise nor the resources to provide representation on a pro bono basis; (2) the resources of private, non-profit organizations are dwindling and the lawyers they have recruited are rapidly becoming "burned out"; and (3) Federal Defender organizations have neither the staffing nor other resources to handle a significant number of Federal death penalty habeas corpus cases. Please provide for the record specific cases that support these statements.

Answer. The federal grant component of funding for a death penalty resource center would be available only if the center is designated a community defender organization under the Criminal Justice Act (CJA). In that event, funding is authorized by subsection (g)(2)(B)(ii) of the CJA, 18 U.S.C. section 3006A. This designation is effected by amending the CJA implementation plan for the district or districts to be served and obtaining approval of the plan amendment by the appropriate circuit judicial council.

If funds for resource centers are not provided, individuals may be executed without even being aware that such review is possible. Federal review is critical. Since reinstatement of the death penalty in 1976, Federal writs of habeas corpus have been sustained in more than one-third of the cases filed. Indeed, in the Eleventh Circuit, where approximately 50 percent of death penalty habeas corpus cases are litigated, over half of all death penalty writs are sustained, i.e., in 50 percent of the cases either a new trial or sentencing is ordered because the original proceedings did not comport with constitutional mandates intended to promote accuracy and fairness in criminal prosecutions.

The high percentage of death penalty writs that ultimately result in a reversal of a conviction and/or sentence reflects the failure of a number of states to compensate assigned counsel in capital cases at a level adequate to secure effective representation. Some states put an absolute limit of $1,000 or less on the amount they will pay assigned counsel for the trial of a capital case. (For example, Mississippi limits its payments to $1,000 for the trial of a capital case and as additional $1,000 for direct appeal. No funds are available for state post-conviction representation in Mississippi. In South Dakota, the limit is only $500 for trial, $500 for direct appeal, and an additional $500 for state post-conviction representation.) The result of this inadequate funding is that counsel who lack the resources and expertise to represent a defendant in a capital case effectively frequently are the only ones willing to accept such assignments. This diminishes the quality of representation received by such defendants and frequently produces trials containing constitutional error.

As set forth in our budget justification, it is expected that the number of petitions from state prisoners who have been sentenced to die will increase dramatically during fiscal years 1988 and 1989. At the same time, the number of attorneys who have both the willingness and expertise to provide representation in these cases is declining. By providing expert assistance and support, resource centers will encourage private counsel to accept appointment in these cases. In addition, resource centers will help to minimize the inefficiencies and costs that now inhere in the transition of cases back and forth between the state and federal courts. In sum, death penalty resource centers will assist the federal courts in their efforts to assure that persons sentenced to death have received the full measure of fairness mandated by the Constitution.

The following are examples of cases which support statements made in the budget justification:

(1) The private bar has neither the expertise nor the resources to provide representation on a pro bono basis.

In Roberts v Aiken, Warden, 3/87-816-OK, U.S.D.C.,.D.S.C., two lawyers who volunteered to represent a death-sentenced inmate in a federal habeas corpus proceeding failed to raise certain significant claims because they thought that they were procedurally barred from doing so. While they had contacted an attorney with expertise in representing death-sentenced inmates, because of his own workload constraints, this attorney was able only to furnish the volunteer counsel with sample pleadings and was not available to discuss the case in detail or substantively review their final product. As a consequence, rather than being permitted to consider the merits of the omitted claims, the federal court now is burdened with litigation over whether substantial issues regarding the legitimacy of the inmate's death sentence should go unreviewed simply because of volunteer counsel's ignorance of relevant law. Had a resource center existed, this situation could have been avoided and the merits of the inmate's sentence expeditiously reviewed.

Eva Ansley is the Director of the Alabama Capital Case Resource Center. In that capacity she monitors the progress of capital cases through the appellate process and attempts to locate lawyers who are willing to provide representation in such cases. She reports that attorneys in Alabama are commonly sole practitioners or members of small firms who are not familiar with federal practice and death penalty jurisprudence. As a result, they frequently find that death penalty federal habeas corpus cases are both time consuming and intimidating. They are often unwilling to provide representation in these cases because they simply cannot afford the time away from their practices. A death penalty resource center will encourage such lawyers to accept death penalty federal habeas corpus cases. Resource centers will reduce the amount of time required to provide representation in a death penalty case by providing lawyers with back-up services, procedural advice and guidance on substantive legal issues relevant to death penalty cases.

(2) The resources of private, non-profit organizations are dwindling and the lawyers they have recruited are rapidly becoming "burned out".

Until a year ago, the Southern Poverty Law Center in Montgomery, Alabama had been providing representation to a substantial number of federal habeas corpus petitioners who had been sentenced to death. It stopped performing this work when funds could no longer be found to support the Center's efforts in this area.

(3) Federal Defender organizations have neither the staffing nor other resources to handle a significant number of Federal death penalty habeas corpus cases.

Absent overarching fiscal constraints, Congress could fund federal defender organizations at a level that would permit them to provide representation in the increasing number of habeas corpus proceedings being filed on behalf of state prisoners who have been sentenced to death. However, the resources that would have to be provided to defenders would be extremely high. A study prepared for the Administrative Office of the United States Courts, which was sponsored by the American Bar Association, concluded that attorneys representing death-sentenced prisoners in federal habeas proceedings in each case devoted a median number of 305 hours to representation at the district court level, 320 hours at the federal circuit court level and 180 hours at the Supreme Court level. The Spangenberg Group, Caseload and Cost Projections for Federal Habeas Corpus Death Penalty Cases in Fiscal Year 1988 and Fiscal Year 1989, p. 38 (not published) (September 1987).

If a large infusion of additional funding is not provided, the amount of work that is required to provide effective representation in such cases can seriously disrupt the ability of a federal defender to meet his or her other representational responsibilities. For example, the Federal Public Defender for the Middle District of Tennessee is currently representing three death-sentenced inmates in district court on petitions for a writ of habeas corpus. That office represented one other such person last year whose case is now back in the state system. In representing these petitioners, the office was required to review voluminous state records and had to investigate each case "from scratch" in order to be sure that all possible claims had been identified and addressed. The time required to handle these few cases has seriously threatened the office's capacity to handle its traditional caseload.

U.S. MARSHALS SERVICE

Legislation is currently pending before Congress to establish the Marshals Service as a Bureau within the Department of Justice. When this legislation was first proposed several years ago, the Judicial Councils of a number of Circuits took positions opposing the legislation.

Question. Has the Judicial Conference taken a position on the legislative changes regarding the operation of the Marshals Service?

Answer. The Judicial Conference, at its meeting on March 15, 1988, unanimously approved H.R. 3551, the "United States Marshals Service Act of 1987," subject to amendments developed in coordination with the Director of the Marshals Service.

RETIREMENT OF BANKRUPTCY JUDGES

The Judicial Conference is supporting legislation to upgrade the retirement plans of bankruptcy judges and magistrates to permit a full annuity equal to the salary of the office after 14 years of service -- in other words, to put these judicial officers on par with Article III judges.

Question. What are the estimated costs of this change?

Answer. We have estimated that the cost of the bill over 20 years would be $82,000,000. This estimate is based on several assumptions which place it on the high side. We have assumed that none of these judges will die before drawing the pension, that all will opt for the new system instead of their current system, and that none will become Article III judges.

Question. What are the reasons for such a change?

Answer. Since 1979, the turnover rate for bankruptcy judges has been high, approximately 73 percent. We have found that most persons interested in magistrates positions are in their thirties. In short, in the current marketplace, it is difficult enough to recruit highly qualified attorneys for these increasingly demanding positions.

Question. One notable difference between Article III judges and bankruptcy judges is the method of appointment. Article III judges receive a lifetime appointment by the President and are required to undergo confirmation by the Senate, while bankruptcy judges are appointed to 14-year terms by the Judicial Council of each of the Circuits. If bankruptcy judges are to be given lifetime annuities after 14 years of service, should Congress be looking at changes to the appointment process as well?

Answer. The power to appoint bankruptcy judges was placed by the Congress in the courts of appeals only four years ago. Changing the process again so soon would seem unwise. Moreover, the Senate confirmation process is a lengthy one. Bankruptcy judge nominations would certainly be given less priority than Article III nominations. Lengthy delays in filling vacancies in these courts would be very harmful to the operation of the bankruptcy system.

SALARIES OF BANKRUPTCY JUDGES

Last year, the Subcommittee, at the request of Senators Cochran and Heflin, included language in the Continuing Resolution to raise bankruptcy judges' salaries to 92% of salaries of Article III judges. Implementation of the provision was delayed to October 1, 1988, due to overall budget constraints. Your supplemental request includes a language change which would make this salary increase effective April 1, 1988, as well as a request for $3,250,000 to defray the cost of the increase.

Question. The budget constraints facing this Subcommittee have not eased since last fall. If the Subcommittee is unable to provide a supplemental, is it possible for the Judiciary to absorb these costs?

Answer. No, the Judiciary could not absorb these costs during 1988.

JUDICIARY PAY INCREASES

In the past year, a number of requests have come before the Appropriations and Judiciary Committees to upgrade the pay of judicial officers and staff.

Bankruptcy judges and magistrates requested that their salary levels be restored to 92 percent of salary received by Article III district court judges. (Included in fiscal year 1988 Continuing Resolution. Effective October 1, salaries will increase to

$82,340.)

The Administrative Office requested that the Appropriations Committee create six new supergrade positions at the Administrative Office. (Three created in fiscal year 1988 Continuing Resolution. Fiscal Year 1989 budget requests three more. Designed to permit the Administrative Office to attract circuit executives to Washington. Administrative Office is absorbing the cost of the upgrade.)

The fiscal year 1989 budget requests $18.3 million to reclassify and upgrade staff positions throughout the Court system.

The circuit executives are requesting that their positions be upgraded from Executive Level V to Executive Level IV ($72,500 to $77,500).

Judges on the Court of Claims have asked that their salaries be upgraded to those of other Article I court judges (at least the level of district court judges -- from $82,500 to $89,500).

Question. Please provide for the record the annual cost of making each of the requested salary adjustments. Is the Judicial Conference on record in support of each of these salary adjustments?

Answer. The information follows:

	Annual Cost
Bankruptcy Judges and Magistrates ($72,500 to $82,300).	$ 6,500,000
Claims Court Judges ($82,500 to $89,500). . . .	$128,000
Administrative Office Positions (requested in 1988 supplemental).	$17,000
Modifications to Judiciary Salary Plan (JSP)	
Secretaries to magistrates JSP-10 to JSP-11.	$ 908,000
Electronic court recorder operator positions JSP-5 to JSP-8	389,000
Intake deputy clerks JSP-7 to JSP-8.	1,177,000
Probation clericals JSP-6 to JSP-7	1,547,000
Transfer of law clerks to judges and magistrates, staff attorneys, and pro se law clerks from graded JSP schedule to ungraded positions.	13,466,000
Career law clerks JSP-13 to JSP-14	702,000
	$18,189,000
Circuit Executives.	$72,000

The Judicial Conference supports each of the salary adjustments, with the exception of the adjustment for Claims Court judges, which is being studied by the Conference.

ADDITIONAL BANKRUPTCY JUDGES

In response to recommendations made by the Judicial Conference, the Congress in 1986 authorized 52 additional bankruptcy judgeships. At that time, the recommendations relied on standards principally based on case filings and other factors such as travel.

Question. What is the Judicial Conference presently doing to refine the standards upon which bankruptcy judgeship needs are measured?

Answer. Through the Committee on Administration of the Bankruptcy System the Judicial Conference has undertaken the task of completely restudying the existing standards and criteria for assessing bankruptcy judgeship needs. The Committee's effort will include measuring and evaluating workload factors, considering case weights, and exploring in depth the impact of many variables, including under-utilization, changes to certain provisions of substantive law, additional support personnel, and the effect of improved case management practices on the manpower needs of the bankruptcy courts.

The Committee and the Judicial Conference recognize that while the study moves forward, a limited number of judicial districts continue to demonstrate a level of caseload and workload that substantially exceeds all existing standards and would no doubt meet any proposed standards that will emerge from our current research. For these districts where true emergencies exist, and the need for additional judicial resources has been clearly shown, Congress has indicated it would like the Judicial Conference to continue to make timely recommendations for additional judgeships, and the Conference intends to do so. All other actions respecting judgeship needs will await the results of the Bankruptcy Committee's assessment and the Judicial Conference's action on the Committee's recommendations.

BUDGET DECENTRALIZATION

You note in your opening statement that the Judicial Conference has approved a 3-year pilot project in 5 courts commencing October 1, 1987 to test the feasibility of decentralizing the budget process.

Question. Specifically, what budget functions would be decentralized under this project?

Answer. The budget decentralization pilot project does not change the current system of formulating the budget within the Judiciary nor its presentation to the Congress. Only the execution phase of the budget cycle will be tested under the pilot project.

Question. Are these functions currently being performed by the Administrative Office?

Answer. Yes. In lieu of providing individual fund authorizations to the courts for their daily operating expenses, the pilot courts have received an "operating budget" for the majority of these expenses. The operating budget provides fund allocations by object classification and provides the courts with flexibility, within certain limitations, to transfer funds between object classifications to respond to unique local needs.

Question. What do you hope to gain by decentralization?

Answer. It is anticipated that the decentralized approach will enable the Judiciary's scarce financial resources to be put to their most efficient use since the courts are better able to identify their needs. In addition, this program will reduce the paper flow between the Administrative Office and the courts and should help improve planning within the courts.

DEFENDER SERVICES

The fiscal year 1989 request for Defender Services ($137,815,000) represents a 62% increase ($52,715,000) over the fiscal year 1988 enacted level ($85,100,000). Your statement indicates the request is based on the number of persons who will be represented under the Criminal Justice Act. The Criminal Justice Act establishes hourly maximum rates of attorney compensation of $60/hr for representation in court and $40/hr out of court. However, the Act gives the Judicial Conference authority to establish alternative rates not to exceed $75/hr.

Questions.

- What rate of compensation is assumed in this budget request -- $60 or $75?
- While the rates are set by law or by the Judicial Conference, it is left to individual judges to determine whether the number of hours billed by defender attorneys are reasonable. Does the Judicial Conference review billings to determine whether they vary among attorneys, by districts or by individual judges within a district?

Answer. Initially, we note that our fiscal year 1988 budget included a $9.5 million carry-forward. Thus, our fiscal year 1989 request is 46 percent ($43,215,000), rather than 62 percent ($52,175,000), over our fiscal year 1988 budget authority. If our fiscal year 1988 supplemental request is included in this calculation, the percentage increase in fiscal year 1989 would be approximately 30 percent ($32,362,000).

Our fiscal year 1989 request is based not only upon the number of persons who will be represented under the Criminal Justice Act, but also upon the increase in the cost of representation brought about by implementation of sentencing guidelines.

Turning to your specific question regarding the rate used in calculating our cost per case, we assumed that during fiscal year 1989 some districts will be compensating counsel at "alternative" rates of up to $75 per hour while the remaining districts continue to apply the "regular" rates of $60 per hour for in-court work and $40 per hour for out-of-court work.

With respect to your question regarding Judicial Conference review of billings, the answer is no. There is no regular review undertaken to determine billing variations among attorneys, districts or judges within districts. However, all claims are subject to audit to determine the sufficiency of supporting documentation, mathematical accuracy, and compliance with the Criminal Justice Act and Guidelines.

In addition, the Criminal Justice Act established limitations on the amount of compensation that may be approved by the presiding judicial officer. Payment in excess of the established limitation requires certification by the presiding judicial officer and approval by the chief judge of the circuit or another circuit judge designated for the purpose.

JUDGESHIPS

In 1978, there were 496 authorized judgeships (district courts and courts of appeals) and 178 senior judges. In 1988, there are 731 authorized judgeships and 296 senior judges -- a 52% increase.

Question. Has the number of support positions grown at a faster rate than the increase in the number of judicial officers over the last 10 years?

Answer. No, the number of support positions has increased only 47 percent since 1978.

Question. Please provide for the record the number of judicial officers authorized and funded by year since 1978 compared with the growth in the number of probation, pretrial, and deputy clerk positions.

Answer. The information is provided on the following page.

Question. Do all support offices in the various circuit courts of appeals and district courts provide standardized services to the bench, bar and the public?

Answer. No, not all support offices provide standardized services. We have requested $750,000 to develop standards and work measurement formulas for court operations. Analysis would be conducted to define the work that is required to be performed in the clerks' offices and probation and pretrial services offices to measure the most efficient means of accomplishing that work.

BUDGET PROJECTIONS

Your fiscal year 1987 supplemental request included $6.4 million

THE JUDICIARY
Positions by Category
Fiscal Years 1978 - 1988

	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	% change 88 over 78
Judicial Officers												
Circuit Judges	97	132	132	132	132	132	132	156	156	156	156	60.8%
District Judges	399	516	516	516	515	515	515	575	575	575	575	44.1%
Senior Judges	178	179	188	198	219	237	242	258	269	286	296	66.3%
Subtotal	674	827	836	846	866	884	889	989	1000	1017	1027	52.4%
Supporting Personnel												
Clerks' Offices:												
Courts of Appeals	284	302	302	318	365	385	415	446	473	486	486	71.1%
District Courts	2,488	2,492	2,392	2,559	2,559	2,915	3,249	3,699	3,889	3,979	3979	59.9%
Probation System	2,818	2,818	2,818	2,703	2,703	2,808	2,871	3,163	3,238	3,679	3679	30.6%
Pretrial Services	154	154	154	126	126	126	326	109	184	309	309	100.6%
Subtotal	5,744	5,766	5,666	5,706	5,753	6,234	6,861	7,417	7,784	8,453	8,453	47.2%

and 386 positions associated with an anticipated increased workload in the courts resulting from the enactment of the Anti-Drug Abuse Act of 1986. Prior to enactment of the 1987 supplemental, the Judiciary conceded that the workload had not materialized as projected.

Question. How accurate are the projections of increased workload included in this year's supplemental request and the fiscal year 1989 budget?

Answer. Our projections generally have been accurate and estimated conservatively. The real answer about the accuracy of our fiscal year 1989 projections, of course, cannot be known precisely until fiscal year 1989 is over. Unlike the normal workload forecasts, there was no history or experience upon which to base such an estimate. For example, to estimate the number of appeal filings, knowing the number of appeals, the number of district judges, and the number of civil cases terminated with judicial action over the last 30 years makes forecasting the number of appeals filings possible. Patterns emerge over time between activity in the district courts and the resultant number of appeals filed, giving us the ability to forecast them. This advantage simply does not exist in the case of new laws.

It would be reasonable to ask how much the supplemental and fiscal year 1989 forecasts rely on educated guesses and how much rely on historical data. The civil, criminal, jury, and bankruptcy forecasts are based on mathematical models of historical data. The probation model is based similarly, but it has been adjusted upward because of the new sentencing guidelines, which in turn entails some guesswork. The appeals model and the defender estimates have been adjusted upward for the guidelines, again with some guesswork involved.

Another way to answer the question about the accuracy of our projections is to show what the Judiciary's record has been in the past. In comparing the actual figures to the forecasts for the fiscal years 1984 through 1988 budgets, we examined the most important workload factors: civil filings, criminal case filings, appeals filings, persons under the supervision of the probation system, and bankruptcy estate and (later) petition filings. In these budgets, out of the 20 forecasts made two years into the future, 11 were within 5 percent accurate, 2 were between 6 and 10 percent accurate, and 7 were greater than 10 percent off. Out of the 25 forecasts made one year into the future, 18 were off by less than 5 percent, 3 were between 6 and 10 percent, and 4 were over 10 percent off. Among the two-year forecasts, 7 were high and 13 were low; among the one-year forecasts, 10 were high and 15 were low.

ADP SYSTEMS

Your fiscal year 1989 request includes $43.2 million for expansion of automated systems in the courts of appeals, district courts, and bankruptcy courts. Originally, the Judicial Conference approved a 5-year plan for automation. However, this has been accelerated to a 3-year plan.

Question. What would be the savings associated with implementing automation over 5 years rather than 3 years?

Answer. The Five Year Plan for Automation in the United States Courts projects the automation activities and budget requirements of the Federal Judiciary over a five year planning horizon. It is updated on an annual basis; thus the current year is dropped and a new "out-year" is added. Of the $43.2 million requested for expansion of automated systems, $6 million is for data processing and $37.2 million is for office automation. The data processing projects will continue to be implemented over a longer time frame. The office automation program, however, would be accelerated from a five-year to a three-year implementation schedule. The plan must be accelerated since the Judiciary lags behind most law firms, many state courts, the Justice Department, and Congress in the area of automation. The requested increase of $37.2 million in 1989 for this activity compares with an increase of $11.8 million which would be required by a five-year plan (a reduction of $25.4 million from the current fiscal year 1989 request).

Question. Is it necessary to accelerate this program from five to three years?

Answer. Yes. The continuing increase in caseload in the courts, coupled with limited increases in the number of supporting personnel, accounts for the urgent need for provision of office automation capability to all judges' chambers and to support offices as rapidly as possible. The Judicial Conference accelerated the planned installation of these systems in an effort to provide the Judiciary with capabilities on a par with other government agencies and private law firms.

MARSHALS SERVICE - COURT SECURITY OFFICERS

Question. The Marshals Service has indicated a desire to obtain authority to enter into personal services contracts with individuals rather than the current method of contractor-provided services for contracting of court security officers. Does the Judiciary support this change?

Answer. Yes. Authority to enter into personal services contracts for security guards is one of the provisions of H.R. 3551, the bill which the Judicial Conference approved on March 15, 1988.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

JUDICIAL CONFERENCE

Question. The Judicial Conference has recently reorganized its Committee structure. In your opening statement, you discuss the requirement to support the Judicial Conference Committees. Please describe the changes in the structure of the Conference Committees.

Answer. The following are examples of changes in structure of the Judicial Conference:

- The Executive Committee of the Conference, has been delegated authority to take action on urgent items which surface between meetings of the full Conference. The Committee receives staff support from the newly established Office of the Judicial Conference Secretariat at the Administrative Office, whose function it is to coordinate all the reports, policy implementation studies, and correspondence of the Conference.
- The creation of a Committee on Court Security. The $57 million Court Security program now has a committee to monitor and review security policy for the courts and to oversee relations with the United States Marshals Service within the courts and the district court security committees.
- The creation of a Space and Facilities Committee, whose duties include establishing priorities in the expenditure of the very limited funds for construction and alteration projects in Judiciary occupied facilities; and overseeing the long range planning needs of the federal courts.

Question. How has this impacted the workload in the Administrative Office?

Answer. The reorganization of the Judicial Conference has significantly increased the workload of the Administrative Office. It is estimated that between 1987 and 1988, the number of staff years dedicated to Judicial Conference staff support will go up from 37 in 1987 to 42 in 1988, a substantial increase of 14 percent in only one year.

OFFICE AUTOMATION

Question. Your opening statement mentions the imbalance that is developing in the funding of Administrative Office support of court programs, particularly in the automation area. What suggestions would you propose to mitigate this imbalance?

Answer. We have been exploring various alternatives.

One alternative we have looked at was to come before this

Committee and request that the funds and positions made available to the Administrative Office appropriation in recent years to support strictly field functions be transferred to the "Salaries and Expenses" appropriation. We would then charge the courts' appropriation for the services we render, such as the operation of the Bankruptcy Automated Noticing (BANS) program, and the installation of computers and software packages in the specific courts. The Administrative Office only would charge the courts for performing functions for which the funds in the base of the Administrative Office appropriation have been transferred to the Salaries and Expenses appropriation. The major drawback to this approach would be the requirement to keep detailed cost records in support of the charges.

A more attractive alternative would be for this Committee to provide the Judicial Conference emergency transfer authority between the "Salaries and Expenses" and "Administrative Office" appropriations. This authority would be granted with the provision of "prior approval" by the Appropriations Committees. This is then handled in the same manner as reprogramming actions now are handled. A limit may be set of, let's say, 5 percent of the appropriation level approved by the Congress from the transferring account. The accounts available for this transfer would be confined to the "Salaries and Expenses" accounts used to fund the courts and the Administrative Office activities.

I do not see any drawbacks to this approach, and as I understand it, some Executive Branch Cabinet Offices currently have similar emergency authority. The major advantages over the alternative mentioned above are:

- It would eliminate the need for added record keeping.

- It provides a more efficient utilization of scarce resources.

As I mentioned in my opening statement, we are encountering situations where the computer hardware has been installed in the courts but cannot be effectively utilized because of a lack of travel funds and personnel compensation. Administrative Office people are not available to the extent needed to install the software and train the court personnel to operate the systems. Under this alternative, funds would be transferred to the Administrative Office to hire the personnel and provide travel monies to get these systems on-line. This would be only a temporary infusion of funds. It would not increase the base appropriation. The Congress would have the opportunity to fully fund the increases necessary for the Administrative Office to support the courts in a supplemental or during the annual budget cycle.

SUBCOMMITTEE RECESS

Senator HOLLINGS. The subcommittee will stand in recess until Wednesday, March 23 at 10 a.m., when we will be discussing Landsat and NOAA's weather modernization programs.

[Whereupon, at 10:28 a.m., Tuesday, March 15, the subcommittee was recessed, to reconvene at 10 a.m., Wednesday, March 23.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1989

WEDNESDAY, MARCH 23, 1988

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:15 a.m. in room S–146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Inouye, Bumpers, Lautenberg, Rudman, Stevens, and Weicker.

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

STATEMENT OF WILLIAM E. EVANS, UNDERSECRETARY-DESIGNATE FOR OCEANS AND ATMOSPHERE, U.S. DEPARTMENT OF COMMERCE

ACCOMPANIED BY:
- DR. MELVIN PETERSON, CHIEF SCIENTIST, NOAA
- DR. RODNEY WEIHER, NOAA COMPTROLLER
- THOMAS PYKE, ASSISTANT ADMINISTRATOR, NESDIS
- DR. ELBERT FRIDAY, DEPUTY ASSISTANT, NWS
- MARK E. BROWN, DIRECTOR, DEPARTMENT OF COMMERCE BUDGET OFFICE

BUDGET REQUEST

Senator HOLLINGS. The subcommittee will continue our hearings on the 1989 budget requests. As we indicated in opening the hearings last week with the Judiciary, we are focusing on the major topics this year.

Today, we have the request of the National Oceanic and Atmospheric Administration, and we intend to particularly look at the funding for modernization of the National Weather Service and the satellite programs. Together, these two parts account for approximately 40 percent of NOAA's 1989 request, so that is where the money is.

We will also spend time on where the money is not, as the administration is, once again, proposing the elimination of programs amounting to $240,836,000, primarily in marine research.

These are reductions that have been proposed and rejected time and again. We also have the new contract for Landsat that was submitted last week pursuant to the terms of the Continuing Resolution, and I want to cover the consolidation of NOAA in Silver Spring.

For the record, NOAA is requesting a total of $1,670,621,000, which is a decrease of $40 million from the 1988 appropriations. Appearing on behalf of NOAA is Dr. William E. Evans, the Under Secretary for Oceans and Atmosphere designate, who is accompanied by Kay Bulow, the Assistant Secretary for Administration; Joe Friday, the Acting Head of the National Weather Service; Tom Pyke from the Satellite Service; Rodney Weiher, the Comptroller; and Mark Brown, the Departmental Budget Officer.

For the information of the subcommittee, we have had Dr. Evans' confirmation hearing before the Committee of Commerce. He is currently the Assistant Administrator for the National Marine Fisheries Service. We are very much impressed with him and expect to be reporting out and have his confirmation as the Under Secretary taken up on the floor momentarily.

Earlier, Dr. Evans was the Chairman of the Marine Mammal Commission, and he has a long and distinguished career in marine research.

We welcome you, Dr. Evans, to the subcommittee. We will include your statement in full in the record, and you can summarize or highlight it as you wish.

NOAA BUDGET

Dr. EVANS. Thank you, Mr. Chairman and members of the subcommittee. I would like to introduce Dr. Mel Peterson, who is the NOAA Chief Scientist and currently the Acting Under Secretary for Oceans and Atmosphere. He has decided to sit up here and hold my hand this morning, which I much appreciate.

I am very pleased to have the opportunity to appear before you today to present the 1989 budget request for the National Oceanic and Atmospheric Administration. NOAA is requesting a total budget authority of $1,153,921,000, which includes $30 million proposed for transfer from the Airport and Airways Trust Fund. This request provides funding for essential on-going programs and activities and continues high-priority developments in the Oceanic, Weather and Satellite areas, while addressing fiscal constraint.

The request is consistent with the administration's commitment to reducing the Federal deficit and maintaining essential Government services. Overall, our budget addresses the future needs of NOAA and provides the funding to move forward. The budget also reflects the shifting of responsibility for certain programs to the beneficiaries of these programs. I would like, at this point, to go through the budget highlights by activity.

THE NATIONAL OCEAN SERVICE

We will continue with the production and distribution of nautical and aeronautical charts and with the geodetic references system. An increase of $1.66 million is proposed for the development of an improved production capability. This automated nautical Charting System II will provide digital charting products. In fiscal year 1989, NOAA will increase public charting prices by approximately $1 per chart to recover the requested budget authority.

We will also continue providing technical products such as tide data service, charts to promote safe and efficient marine transportation and coastal offshore construction. We will provide information during the response to spills of oils and hazardous materials in order to minimize the adverse effects of marine pollution; and as a matter of fact, we just recently responded very quickly to a March 18 oil spill in Puget Sound.

NOAA will continue to work with coastal States and territories in implementing programs to promote the rational use of the nation's coastal zone and designate and manage biologically valuable marine and estuarine areas.

Federally-approved Coastal Zone Management programs have been instituted in 29 coastal States and territories, covering 94 percent of the U.S. coastline. The administration again feels the Coastal Zone Management program has achieved its purpose, and it is proposed for termination in fiscal year 1989.

I would like to say, however, and I would like to mention that many of our core programs this last year are starting to address coastal ocean issues, and on behalf of the Secretary, I am reviewing and re-evaluating all of these programs.

NATIONAL MARINE FISHERIES SERVICE

The budget request for the National Marine Fisheries Service places highest priority on conducting the research necessary to make decisions. We will continue to provide scientific information for development and updating of fisheries management plans. We will use our data and research information to make conservation and management decisions for those fish stocks, marine mammals, and endangered species that require management. Enforcement of fisheries laws and regulations will be a priority.

I just this last year made it one of the highest priorities in the National Marine Fisheries Service. We will address critical habitat issues and meet our responsibilities.

The National Marine Fisheries Service will provide appropriate Federal industry assistance in the areas of fish product quality and safety research. I just returned from Orlando, where we had a meeting for our first large marine ecosystems planning committee, and I am pleased to say that we had representatives of all of the Fisheries Councils there and we had representatives from all of the other line offices of NOAA.

We had some discussion of many of the programs that are being done by NOS, OAR, some of the NESDIS products and some of the things being used by the National Marine Fisheries Service last year to help us really concentrate the total NOAA effort to looking at the marine systems, especially fisheries.

OCEANIC AND ATMOSPHERIC RESEARCH

In the area of oceanic and atmospheric research, NOAA will continue to address national priorities. In recognition of the need for a cohesive national program to understand the global system and to develop the capability to predict change, we are proposing an enhancement of climate prediction activities to establish an integrated NOAA program in climate and global change.

The other major participants in the climate and global change initiative are NASA and NSF. No program overlapping will occur in carrying out the individual agency responsibilities.

I am pleased to say that along with NASA at the recent National Space Club meeting that NOAA was the recipient of the Aerospace Award for our activities in looking at the Antarctic ozone layer. We have also made excellent progress in furthering our understanding of global atmospheric chemistry, including research on greenhouse warming, stratospheric ozone depletion and acid rain.

We will continue to develop and test the wind profiler system with the goals of acquiring and deploying a demonstration network of 30 profilers in the central United States by the summer of 1990.

Adequate funding has also been provided in NOAA's budget to continue many important programs, including PROFS, severe (mesoscale) weather research, hurricane prediction research, space environmental monitoring and prediction research and the Great Lakes Environmental Research Laboratory.

SEA GRANT PROGRAM

Again, for fiscal year 1989, funding for the National Sea Grant program and the NOAA Undersea Research program is not being requested. The Sea Grant program has accomplished its intended goal of establishing a network of institutions with expertise in marine science, education and advisory services, and the NURP provides services which are lower priority at this time and not central to NOAA's mission.

NATIONAL WEATHER SERVICE

During fiscal year 1989, NOAA will continue progress toward the modernization of the National Weather Service. This effort will continue the procurement of an automated surface observing system, ASOS, and continue production of the next generation radar [NEXRAD]. These systems will help us modernize the National Weather Service with the latest technology and science to improve our severe weather and flood warnings and forecasts to the Nation, and I have Dr. Elbert Friday with me this morning to help explain that to you.

NATIONAL ENVIRONMENTAL SATELLITE AND INFORMATION SERVICE

This budget provides the funding associated with the annual increments to the procurements for spacecraft, launches and associated ground systems changes for the polar and geostationary orbiting environmental satellites.

The procurement of the next series of geostationary satellites, GOES I through M, will provide continuous weather observations from space through the late 1990s. These satellites will have improved sensor capability to maintain surveillance and assist in the prediction of severe storms such as hurricanes and tornadoes.

Unfortunately, with the increase in the technology and using new technology, the price goes up. The satellites are going to be necessary tools, however, for the 20th and 21st century for looking at global oceans as well as looking at global climate. In fact, if we had some of the capabilities that we hope to have in the future, we would have been able to address such issues and, known ahead of time, for instance, of one almost disastrous thing which happened along the coast of North Carolina, and that was the red tide issue that came up.

Our request provides funding for polar orbiting spacecraft to be launched alternatively into both a.m. and p.m. orbits at 15- to 16-month intervals to provide in-orbit and backup, assuring continuity of operational coverage.

LANDSAT COMMERCIALIZATION PROGRAM

An increase is also requested to continue the Landsat commercialization programs that were initiated in fiscal year 1985. Funding is requested to subsidize and launch one spacecraft, Landsat 6, which will be operated by the private sector. Contract negotiations with EOSAT are continuing and will be completed by April 1. A study is also underway assessing further Landsat options. In fact, I believe you now have a copy of that contract before you.

These proposed increases will be partially offset by a proposed decrease to terminate government support of Landsat 4 and 5, as they are not expected to still be operational in fiscal year 1989, but they may surprise us.

PROGRAM SUPPORT

We are proposing to consolidate nearly all of NOAA's Washington area employees into one location in Silver Spring, MD. This will provide opportunities for improvements in management efficiency and allow a lot of our scientists who are now beginning to work with each other to create critical mass, if you will, of scientific talent.

We are requesting an increase to begin the replacement of critical components of the airborne navigation system used on two research aircraft, and we are requesting increases to provide for the upkeep of our Western Regional Center in Seattle, WA, and to provide the procurement support necessary for major National Weather Service and satellite systems.

Mr. Chairman, I thank you for the opportunity. I, along with the staff that I have with me here, would be most pleased to try to address any questions that you may have. Thank you very much.

(The prepared statement of Dr. William E. Evans follows:)

PREPARED STATEMENT OF WILLIAM E. EVANS
UNDERSECRETARY/DESIGNATE FOR OCEANS AND ATMOSPHERE
U.S. DEPARTMENT OF COMMERCE

Mr. Chairman and members of the Committee, I am pleased to appear before you today in support of the FY 1989 budget request for the National Oceanic and Atmospheric Administration (NOAA). NOAA is requesting total budget authority of $1,153,921,000, which includes $30.0 million proposed for transfer from the Airport and Airways Trust Fund.

This request provides funding for essential ongoing programs and activities, and continues high priority developments in the weather and satellite areas.

The request is consistent with the Administration's commitment to reducing the Federal deficit and maintaining essential government services. Overall our budget addresses the future needs of NOAA and provides the funding to move forward. The budget also reflects the shifting of responsibility for certain programs to the beneficiaries. I would like at this point to go through the budget highlights by activity:

NATIONAL OCEAN SERVICE

We will continue with the production and distribution of nautical and aeronautical charts and with the geodetic referencing system. An increase of $1.660 million is proposed for the development of an improved production capability for the Next Generation Cartographic products. This modernization will be accomplished through the development of an Automated Nautical Charting System II (ANCS II) that will provide digital charting products. In FY 1989, NOAA will increase public chart prices by approximately $1.00 per chart to recover the requested budget authority.

In the Observation and Assessment subactivity we will continue providing technical products such as tide data surveys, charts to promote safe and efficient marine transportation, and coastal and offshore construction; providing information during the response to spills of oils and hazardous materials in order to minimize the adverse effects of marine pollution; and providing for the collection, analysis, modeling, and output of oceanic and related atmospheric observations.

In the Ocean and Coastal Management subactivity NOAA will work with coastal states and territories in implementing programs to promote the rational use of the Nation's coastal zone and designate and manage biologically valuable marine and estuarine areas. Now that Federally approved coastal zone management programs have been instituted in 29 coastal states and territories covering over 94 percent of the U.S. coastline, the Coastal Zone Management grant program has achieved its purpose and is proposed for termination in FY 1989. All states desiring to participate in this program have submitted and are implementing their plans, and funding responsibility should now be transferred to the program beneficiaries.

NATIONAL MARINE FISHERIES SERVICE

The budget request for the National Marine Fisheries Service places highest priority on conducting the research necessary to make conservation and managment decisions. Programs that primarily benefit State or Local areas, or the private sector are proposed for reduction. Also proposed for reduction are programs directed toward non-Federally managed species.

In the Information Collection and Analyses subactivity the budget request will allow us to continue to provide scientific information for development and updating fishery management plans, resolution of critical habitat issues, and management of marine mammals and endangered species.

In the Conservation and Management Operations subactivity we will use our data and research information to make conservation and management decisions for those fish stocks, marine mammals and endangered species that require management. Enforcement of fishery laws and regulations will be a priority. We will address critical habitat issues and meet our responsibilities.

In the State and Industry Assistance Programs subactivity the National Marine Fisheries Service will continue to provide appropriate Federal industry assistance in the area of fish product quality, and safety research. Grants to States, direct financial subsidies to industries and marketing research should be the responsibility of the beneficiaries of those programs and are proposed for termination. The Administration will submit a revised marine fishing license fee proposal that addresses Congressional concerns. Implementation would begin in FY 1990.

OCEANIC AND ATMOSPHERIC RESEARCH

In the area of oceanic and atmospheric research, NOAA will continue to address national priorities. In recognition of the need for a cohesive national program to understand the global system and to develop the capability to predict changes, we are proposing an enhancement for climate prediction activities to establish an integrated NOAA program in Climate and Global Change. The other major participants in the Climate and Global Change initiative are NASA and NSF. The Proposals in the FY 1989 budget were developed to assure that no program overlapping will occur in carrying out the individual agency responsibilities.

We have also made excellent progress in furthering our understanding of global atmospheric chemistry, including research on "greenhouse warming", stratospheric ozone depletion and acid rain. We will continue to develop and test the wind profiler system with the goal of acquiring and deploying a demonstration network of 30 profilers in the Central U.S. by the summer of 1990.

Adequate funding has also been provided in NOAA's budget to continue many important programs including PROFS, severe (mesoscale) weather research, hurricane prediction research, space environmental monitoring and prediction research, and the Great Lakes Environmental Research Laboratory.

Again, for FY 1989, funding for the National Sea Grant College Program and the NOAA Undersea Research Program (NURP) are not being requested. The Sea Grant program has accomplished its intended goal of establishing a network of institutions with expertise in marine science, education and advisory services, and the NURP clearly provides services which are not central to NOAA's mission. Both of these costly programs provide benefits directly to specific states or regions, and therefore should appropriately receive funding to continue from these beneficiaries.

NATIONAL WEATHER SERVICE

During FY 1989, NOAA will continue progress toward the modernization of the National Weather Service. This effort will continue the procurement of an automated surface observing system (ASOS), and continue production of the next generation radar (NEXRAD). These systems will help us modernize the NWS with the latest technology and science to improve our severe weather and flood warnings and forecasts to the Nation. Funding for Advanced Weather Interactive Processing System (AWIPS) is discontinued. More cost effective options for replacement of the current information processing and communications systems (AFOS) will be assessed.

NATIONAL ENVIRONMENTAL SATELLITE, DATA, AND INFORMATION SERVICES

This budget provides the funding associated with the annual increments to the procurements for spacecraft, launches, and associated ground system changes for the polar and geostationary orbiting environmental satellites.

The procurement of the next series of geostationary satellites (GOES I-M) will provide continuous weather observation from space through the late 1990's. These satellites will have improved sensor capabilities to maintain surveillance and assist in the prediction of severe storms such as hurricanes and tornadoes.

Our request provides funding for polar orbiting spacecraft to be launched alternately into both A.M. and P.M. orbits at 15-16 month intervals to provide in-orbit and back-up assuring continuity of operational coverage.

An increase is requested to continue the LANDSAT Commercialization program that was initiated in FY 1985. Funding is requested to subsidize and launch one spacecraft, LANDSAT 6, which will be operated by the private sector. Contract negotiations with EOSAT are continuing and will be completed by April 1, 1988. A study is also underway assessing further Landsat options.

The NESDIS proposed increases will be partially offset by a proposed decrease to terminate Government support of Landsat 4 and 5 operations and ground processing of data. Landsat 4 is only used to collect Multi-Spectral Scanner (MSS) data, due to a transmitter and power supply failure in FY 1983. Landsat 5 reached the end of its design life in FY 1987.

PROGRAM SUPPORT

We are proposing to consolidate nearly all of NOAA's Washington area employees into one location in Silver Spring, MD. This will provide opportunities for improvements in management efficiency. Better program integration will also be achieved from collocation of the various organizational components. Funding is requested for office furniture with GSA assuming the remainder of the costs.

We are requesting an increase to begin the replacement of critical components of the airborne navigation system used on two research aircraft. We are requesting increases to provide for the upkeep of our Western Regional Center in Seattle, Washington and to provide the procurement support necessary for major National Weather Service and satellite systems.

Thank you Mr. Chairman, I would be happy to address any questions which you or other members of the committee might have regarding our budget request.

BUDGET PRIORITIES

Senator HOLLINGS. Thank you. I want to yield to our distinguished former chairman and ranking member.

Senator RUDMAN. Thank you, Fritz.

You know, the hearing is focused, obviously, on the satellite and weather service components, and I think that is appropriate. I just want to talk about some numbers so that we all understand the stark contrast that exists here.

This request includes $167.7 million in program increases of which $134.8 is for satellite procurement and operations, and $15 million is for the Weather Service.

On the other hand, of the $240.8 million in proposed decreases——

Dr. EVANS. Right.

Senator RUDMAN. ——we are being asked by the administration to commit ourselves to even more expensive satellite programs and to the modernization of the Weather Service, all of which we agree is desirable. I don't think there is any disagreement there necessarily. At the same time, a lot of our colleagues are going to ask us to protect certain on-going ocean, coastal and fisheries programs, all within the limits of a Budget Summit agreement, of which you are all aware of the numbers.

As the ranking minority member of this subcommittee and having chaired it for awhile and knowing about facing those decisions in this atmosphere, I have got to tell you: I think I have finally discovered the meaning of the words "cruel and unusual punishment."

We have got a real problem on our hands. You have taken a view—and I find your statement interesting—as to what you think your mission is and the mission of NOAA. I dare say you are going to hear some substantial disagreement from a lot of people about that including my colleague sitting to my right.

So I have a few questions about this, but I am going to tell you that I think it is going to be very difficult, at the outset, to come anywhere near to what you are talking about within the Summit Agreement by simply gutting these programs.

Now, philosophically, this is good; this is what budget and appropriations hearings ought to be about. I noticed a very interesting piece in the New York Times this past week by the former Chairman of the Council of Economic Advisers, Herb Stein, who said that all of us, the Congress, the administration, we were talking too much about numbers and not enough about priorities and philosophy.

Boy, here is a good example. I mean, we are right down to it. If we say we have a limited amount of funds, and that is what the President has said—this is this year's agreement—then we are going to have one Donnybrook about what the priorities are going to be.

My guess is when it is all over, it is going to be in between what you think and what we think. I am not sure how far to the ocean side and how far to the weather and the satellite side. But I just want to tell you my view, because I know the realities of what the Congress feels about the relative merits of these programs within the budget priorities, and I will add this: That I think there is substantial disagreement as to what you view the mission and the objectives of the agency is and what many in the Congress do. Obviously, there is plenty of room for honest disagreement, but that will finally be expressed when the prioritization comes out.

LANDSAT

I want to look at Landsat for just a moment, Mr. Chairman. I want to yield to other Members who have other hearings to go to, I am sure. But under the terms of the CR, NOAA has to sign a contract by April 1 or the $57.5 million in fenced funding will be released to restore some of the across-the-board reduction of about $70 million in other programs.

How much has been obligated to date? I believe it is around $95 million; is that correct?

Dr. EVANS. I believe so. Tom?

Mr. PYKE. That is correct.

Senator RUDMAN. If it were terminated, would the Government recover any of those funds?

Mr. PYKE. No. Those funds that have been obligated to date are sufficient to cover the total obligations and total liability of the Government to date.

Senator RUDMAN. All right. To put it another way, if we didn't continue it, what savings might we expect over the next several years, or probably, to put it a better way, how much for other NOAA programs? My guess is that the answer to that question is about $50 million this year and up to $150 million in the outyears. Is that about accurate?

Mr. PYKE. Senator, this fiscal year we have available $57.5 million——

Senator RUDMAN. Right.

Mr. PYKE. ——that we expect to obligate against the EOSAT contract, and we have been successful in the negotiations with the EOSAT and in interaction with the Air Force in reducing the total cost of the Landsat commercialization program below the amount that we had in the plan that was submitted to the Congress last fall.

FUTURE OF LANDSAT

Senator RUDMAN. All right. The contract calls for one additional satellite; the original proposal was for two.

You are now conducting some studies on the future of commercialization, as I understand it, as is EOSAT, the contractor. If the studies conclude that continued government support is necessary and procurement of an additional satellite is recommended, couldn't the cost of the program easily increase by about $200 million?

Mr. PYKE. Senator, it is our intent in developing the plan for the future of Landsat beyond the future of civil earth remote sensing beyond Landsat 6 to do our very best to come up with a plan that will allow for the successful commercial effort without further government investment in capital costs for future satellites and launch.

Senator RUDMAN. Of course, that has been your plan all along, and we have sat for endless hours, the Chairman and I, with various people, trying to find out if that could be possible, and so far, it hasn't worked. I will repeat my question.

If the financial realities with the private sector remain the same, could not this program increase by about $200 million?

Mr. PYKE. We don't believe so, sir. We believe that there is now ample opportunity in working with the private sector, based on the experience to date in Landsat and related areas, to develop a plan that will allow us to assure continuity of U.S. presence in this important area and to rely on the private sector to make major advancements.

Senator RUDMAN. But if you are wrong and the private sector says, as they have been saying for the last 2 years, "We just can't undertake that risk," we are talking about a $200 million; am I not correct? That is what we are talking about.

Mr. PYKE. We have not developed an estimate for the additional cost at this time because our plan is to fund the development of the single space craft, Landsat 6, and its ground system and to pay for the launch of Landsat 6, and we anticipate successful interaction with the private sector in getting them to be a true partner in the future commercialization.

Senator RUDMAN. That has been difficult up to now, though, hasn't it? The amount of contribution that we had talked about 4 years ago, that just hasn't happened.

Senator HOLLINGS. Would the distinguished Senator yield?

Senator RUDMAN. Sure, of course.

COMMITMENT TO EOSAT

Senator HOLLINGS. On that point, just what is the commitment to EOSAT of, say, G. E. and RCA, Hughes and General Motors. Can you tell the committee here? What is their commitment, anyway?

We have been negotiating it. We are just dancing around the fire. Let's find out exactly what that commitment is.

Mr. PYKE. Yes, sir. Mr. Chairman, what we have negotiated with EOSAT is a modification to the existing contract which backs us off to having the Government pay for a single satellite, Landsat 6, and its associated ground support system.

Senator HOLLINGS. What is the type and level of financial commitment by these private companies, $5, $50 million; one company, three companies? Give it to me straight.

Mr. PYKE. In this particular case, sir, we have an innovative provision in the contract with close contract modification that provides for EOSAT to contribute up to $10.8 million.

Senator HOLLINGS. I am asking about the private participation, their level and that amount.

Mr. PYKE. That is correct, sir. In this particular case, EOSAT has agreed to contribute up to $10.8 million out of their profits to offset the costs, in part, of developing this Landsat 6 spacecraft and the ground system.

Senator RUDMAN. What if they don't have a profit?

Mr. PYKE. We fully anticipate they will.

Senator RUDMAN. What is the provision, say, if they don't have a profit?

Mr. PYKE. We fully anticipate, with the best information available to us, that there have, at a minimum, a portion of that profit based on their income from this year, and based on the anticipated successful launch of Landsat 6 and its operating successfully, we believe that the chances are excellent that we will be able to recover that entire $10.8 million that they have offered as part of the negotiations.

Senator RUDMAN. That was not my question. I assume any good person would negotiate that. My question is a very specific one, and I think I know how to ask a specific question, and I would like a specific answer. Is the contingency of the $10.8 million profit? Is that what they have to do? They have to make a profit to contribute the $10.8; if they don't make a profit, they don't contribute the $10.8 million. Is that an accurate statement?

Mr. PYKE. Yes, sir.

Senator HOLLINGS. What is the level of profit? What is their level of percentage?

Mr. PYKE. My understanding is that, first of all, in the package that we have negotiated, we get, of course, $2.5 million off the top of their profits. Their revenues this year are such that the $2.5 million off the top would represent only about 15 percent of their revenue stream for this most recent year. So we are talking about a relatively small amount of the total income that EOSAT has as a part of operating the Landsat system at the present time.

Senator RUDMAN. Mr. Chairman, we certainly would hope that those estimates are right. Unfortunately, the realities that we are faced with in terms of long-range planning are such that we just can't plan here in this committee for 6 months, 1 year and 2 years; we have to look at long-range impacts in all of NOAA.

The reason I followed this line of questioning was because I am sure they are right, and your optimism is based on fact. But we have had a number of situations which I am sure people here are familiar with where it hasn't worked out, and we have had to come up with more and more money and had to squeeze other programs which some members of Congress think, with all due respect, should go to the sky. Many people think the bottom of the ocean is equally important, maybe more important to some people.

Mr. Chairman, I will yield to my friend from Connecticut, who is an expert in some of these areas.

Senator HOLLINGS. Lowell.

PREPARED STATEMENT

Senator WEICKER. Thank you very much, Mr. Chairman. Thank you very much, Senator Rudman. I am going to be very brief, and I will ask that my opening statement in its entirety be placed in the record at this point.

Senator HOLLINGS. It will be.

(The prepared statement of Senator Weicker follows:)

PREPARED STATEMENT OF HON. LOWELL P. WEICKER, JR.

U.S. SENATOR FROM CONNECTICUT

Good Morning Dr. Evans, it's a pleasure to see you again. The business before us today, the proposed FY89 budget and several remaining FY88 budget matters for the National Oceanic and Atmospheric Administration, is extremely important. As I see it, the very survival of NOAA's core ocean and coastal programs is at stake.

I hope that we can count on your leadership, Dr. Evans, to help fend off this brutal budgetary attack. Certainly everyone here today knows how hard this Subcommittee has fought to keep NOAA going over the years. If we're to make progress on this front, however, rather than just holding the line, we've got to have your cooperation.

Senator Hollings' decision to focus today's hearing on the Weather Service and LANDSAT programs is a wise one. These programs represent an ever increasing portion of NOAA's budget, and appear to be the only ones wholeheartedly supported by the Administration. I'm sure I don't need to tell you what's in your budget proposal, but I do want to tell you that I don't like the priorities it reflects at all. You propose 193 million dollars in cuts in the National Ocean Service, Oceanic and Atmospheric Research, and fleet support. At the same time, you propose 150 million dollars in increases for the National Weather Service and Satellite Services.

The priorities expressed by these numbers are clearly vastly different from those of this Senator, and I think of this Subcommittee. I have nothing against NOAA's remote sensing and weather programs, I just think we would be crazy to mortgage the equally important programs concerned with the oceans' living resources in order to support this hardware.

In the past this Subcommittee has devoted much of its time to the oversight of those research programs which are being so aggressively attacked. Given the tremendous resources that we are investing in NOAA's hardware intensive satellite and weather programs, however, it is high time that we gave them the scrutiny which they deserve.

There are many critical questions about NOAA's weather and satellite programs which must be answered before we can proceed with deliberations about NOAA's budget. I would hope that we will get answers to some of these questions today. Among them I would include:

—What is NOAA's strategic plan for the next five, or for that matter, ten years for its satellite and core oceans and coastal programs? Is there even such a plan, or are we just blindly accepting decisions made years ago about future satellite procurement?

—Assuming that the weather and LANDSAT satellite programs are consistent with a strategic plan for NOAA, are we providing the needed ground support to actually utilize the deluge of data which these instruments produce? Is NOAA seriously addressing the seemingly mundate, but absolutely critical, tasks of data management, dissemination, and analysis, or is the majority of this satellite data going to sit unused on the shelves of some government warehouse?

—Finally, what exactly are the tradeoffs that we are making as we move down this path? Can we really say that they are justified, much less in the best interest of the Nation?

Unfortunately I think far too few of these questions have been pursued in the past. I can also assure you that they have never been answered in a way which would convince this Senator to accept the radical revision of priorities in NOAA which the Administration has been trying to accomplish for nearly eight years now.

With the submission of the new LANDSAT contract and the proposed reprogramming notice this Subcommittee is faced with some very difficult decisions. These decisions need to be based on honest information and open debate about relative priorities within NOAA. I hope today's hearing brings that information to light.

Mr. Chairman, thank you.

CUTS IN AND ELIMINATION OF PROGRAMS

Senator WEICKER. Just reading the operative sentence from that opening statement, I quote "I am sure I don't need to tell you what is in your budget proposal, but I am going to tell you I don't like the priorities they reflect at all. You propose $193 million in cuts in the National Ocean Service, Oceanic and Atmospheric Research, and fleet support." More particularly, you propose the elimination of Sea Grant, the elimination of NURP and the elimination of Coastal Zone Management.

NATIONAL UNDERSEA RESEARCH PROGRAM

There is no point in taking the Committee's time with the Sea Grant argument; we have rejected that fairly consistently. I don't think it is going to be eliminated. But the one that I would like to discuss is: Why do you think NURP ought to be eliminated? I don't understand that one at all. What bothers me about that is that it gets to the whole mission of NOAA and what we think the mission ought to be.

Dr. EVANS. Senator, I think that the administration's feeling has been all along that there are a number of States and private sector and other organizations which have been developing some of the new technologies for underwater development. As you are well aware, there have been a number of, the greatest advances in ROVs; the greatest advances in light-weight submersibles for undersea research.

We have attracted, in the marine technology field, a number of people from the private sector. The amount of money invested, as I am sure you know, since you go to a number of the undersea technology meetings every year; the number of private sector companies, both large and small, that are being involved in this has increased rather significantly.

I believe it is the feeling that what they have is that the private sector has now basically taken over in this program, and that a lot of the technologies that were originally under that program have now been folded into some of our core programs. For instance, we are using a lot of that technology on a regular basis in fisheries, and also OAR is using it in some of their programs.

We do a lot of diving; we use it as a regular thing in the marine sanctuary programs and a number of other programs, and I think that is the reasoning behind it. But as I said, one of the things that I am hoping I will have the opportunity to do is, and a number of things, is that once I get a chance to step into this position, as I have mentioned to you in the past when I was here with the Marine Mammal Commission, is that I will have an opportunity to sort of review a number of these programs, not only with myself, but with the Secretary and with other people within NOAA.

Senator WEICKER. I am looking forward to your tenure as the Administrator.

But first of all, just a couple of comments. I attended one of the more bizarre moments in my history here as a Senator in Washington, D. C. Fritz, you might be interested in this because it deals with a dear friend of all of us. But I am going to make the point, because we are just not going to do what some people are trying to do in terms of NOAA's mission, what is needed to carry out that mission, et cetera.

OCEAN PROGRAMS

I was asked to attend for a few minutes, and speak at the dedication of one of NOAA's ships and dedicate it to the memory of Mac Baldrige.

Senator HOLLINGS. That was before it was put up in mothballs.

Senator WEICKER. That is the point I am going to make here. Now, all of us adored Mac, but when it came to NOAA, as you know, Fritz and Warren, literally the entire first portion of his tenure as Secretary of Commerce dealt with trying to eliminate NOAA, and most particularly, trying to eliminate the whole NOAA fleet.

Senator HOLLINGS. Right.

Senator WEICKER. The whole NOAA fleet. And here as a memorial to this man, we change the name of a NOAA ship, to the *Malcolm Baldrige.* The next thing you guys are going to tell me is that we are going to dedicate the Sea Grant program over to somebody at OMB who has——

[Laughter.]

Senator WEICKER. ——who has tried to eliminate Sea Grant for the last 6 years. This is simply bizarre. I don't mean to be critical, but I have never felt so awkward in my life as I felt at that ceremony, and you should know this.

The fact remains that—again, Fritz can bring the proper perspective—private enterprise, the administration likes to justify all these cuts by either "Private enterprise will take care of it," "volunteerism," "Waste can be eliminated," or something like that.

The fact remains that private enterprise went deep into this business of the oceans about, I think it was, 15 years ago, and they found it very unsatisfactory, and they got out of it, and their equipment is rusting all over the docks of this Nation. Now, maybe they are starting to get back into it, but I don't want this Nation's ocean future to be dependent on the bottom line profit statement of a corporation.

It is too important to the country. I don't know whether they are going to be in or out of marine research, underwater research; I don't know. I know where we should be as a nation in terms of our energy future; our food future; knowledge of the ocean floor. We have got to do that job.

If others want to come along and build on that research, that is fine by me. In my other subcommittee, as you know, I have been sort of a guardian of the National Institutes of Health and the basic research that goes on there. I am delighted that basic research has been made available to our pharmaceutical industry, which then has the applied research, which makes us foremost in the world.

But I wouldn't want to, in the words of the administration, privatize NIH and eliminate that basic research.

Let's understand that as far as the oceans are concerned, I look upon NOAA as doing the basic research. If private companies want to come in, okay, fine; the more the merrier. But we cannot have the same kind of hiatus which we had 15 years ago when they just left it en masse, and, I might add, so did all the youngsters who had majored in college hoping to get in on this revolution.

Mr. Chairman, I want to make clear that as far as Sea Grant is concerned, Coastal Zone, as far as NURP is concerned, these are essential activities of NOAA, and I will not take, as a substitute, the fact that either private enterprise or some volunteer effort might supplant NOAA's efforts in these areas.

I know that I have had the cooperation of Senator Hollings, who has just been terrific over the years. We worked as Chairman or Ranking member or vice versa. Senator Rudman has been superb in allowing me on this section of the State, Commerce, Justice budget to come back in here and voice my opinion.

So I would only suggest that in determining where your monies are going to be, and where your cuts are going to come from, you are not going to get it out of this area, not as long as this Senator is alive.

Senator HOLLINGS. Well, "Every man a chairman," Emanuel said. [Laughter.]

Senator RUDMAN. Mr. Chairman, I just had one other area.

Senator HOLLINGS. Go ahead.

Senator RUDMAN. I will tell you this is the only committee in which I serve that because of my location between my two colleagues I come off as being timid and unassuming. [Laughter.]

ADHERENCE TO REPORT LANGUAGE

I want to ask one question, probably of your fiscal person. You know, there is is a memo out from Mr. Miller. I guess we will name it "The Jim Miller Sea Grant Program." [Laughter.]

There is a memo out to all agency heads that is an open invitation to essentially ignore report language. Has someone here seen that?

Dr. WEIHER. Yes, sir.

Senator RUDMAN. You have seen that, of course. We have had excellent relations over the last 8 years with NOAA in complying with congressional intent. We try to work things out in report language; we try to find our differences and work out language.

I guess the inevitable result of that memorandum is that we are going to have to put everything into absolutely rigid bill language. Do you think we are going to have to do that with NOAA, or do you think that we can continue the spirit of cooperation that we have had, Mr. Miller's memorandum notwithstanding?

Dr. WEIHER. I would say I hope we could continue the spirit of cooperation that we have had. That whole question is, of course, under review in the Department and the administration. I don't think any final decisions have been made at this point, and they won't be until at least the end of April.

Senator RUDMAN. I don't know whether the Chairman has seen that memorandum or not, but I will tell you, it is my intention this year that when we get down to the final writing of the bill, that we are going to have staff go over the bill very thoroughly. If there are disputes—to quote Secretary Shultz before the Iran Contra committee, "In this town, good faith and truth are the coin of the realm."—Either we are going to have it in report language or in bill language. But if we feel that that is the way it ought to be and you have a basic disagreement, then it is up to us to have it passed as a statute or lose, in which case you can do what you want.

Mr. Chairman, I think we have to pay attention to that—We are already having problems with one agency in Commerce on this issue, not this agency—to be sure we put report language in and be sure that everybody knows we mean what we say.

BUDGET CUTS

Senator HOLLINGS. I am looking, Appendix H of NOAA's Budget in Brief. This is a long list of budget decreases covering programs in mapping and charting; observation and assessment; ocean and coastal management, five different sections under there; National Marine Fisheries Service, two dozen sections under there that are taken out, and they will all have to be written back in. We might as well put these in the bill. These are all eliminated. You have got four pages of these things, single-spaced.

I will make Appendix H a part of the record at this point.

[The information follows:]

APPENDIX H

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
FY 1989 BUDGET

OPERATIONS, RESEARCH, AND FACILITIES

FY 1989 PROPOSED DECREASES

The program decreases proposed in the FY 1989 Budget request are as follows:

NATIONAL OCEAN SERVICE

	Decrease	Remaining Base
Mapping, Charting and Geodesy		
o Reduce State-Specific Geodetic Surveys....................	$377	-0-
o Reduce Vertical Control Network Program..................	471	3,044
o Terminate Multi-Purpose Cadastre Program................	1,835	-0-
Observation and Assessment		
o Reduce Marine Boundary Program...........................	282	935
o Reduce Ocean Services Program...........................	3,389	873
o Reduce Circulatory Program...............................	659	377
o Terminate Chesapeake Bay Tide Stations Maintenance.......	19	-0-
o Reduce Ocean Assessment Activities......................	6,025	5,837
o Terminate California Data Buoys..........................	150	-0-
o Terminate Federal/State Demo Project with South Carolina	705	-0-
Ocean and Coastal Management		
o Terminate Section 306 and 306A Grants...................	32,952	-0-
o Terminate Section 309 Grants............................	942	-0-
o Reduce Estuarine Reserve System Program.................	1,506	1,185
o Reduce CZM Program Management...........................	314	2,279
o Reduce Marine Sanctuary Program.........................	498	2,633
TOTAL, National Ocean Service........................	-50,124	

NATIONAL MARINE FISHERIES SERVICE

	Decrease	Remaining Base
Information Collection & Analysis		
Resource Information		
o Assessing and Monitoring Fisheries Stock.................	1,015	16,217
o Fish Oceanography and Survey Technology..................	868	
o Habitat Research...	4,833	7,202
o Stock Enhance./Disease Res. (Aquaculture) Stuttgart Fac..	3,858	-0-
o West Coast Groundfish Research/Tiburon Lab Transfer......	941	-0-
o Protected Species Research...............................	1,200	3,705
o Marine Mammal Research...................................	1,506	

	Decrease	Remaining Base
o Salmon Treaty Research	4,708	6,299
o SEAMAP	942	-0-
o Antarctic Research	1,883	-0-
o Habitat Evaluation Methodology	471	-0-
o Chesapeake Bay Studies	1,600	-0-
o Sub-Arctic Bottomfish Research	753	-0-
o MARFIN	3,295	-0-
o Right Whale Research	235	-0-
o Hawaii FMP Development	471	-0-
o Gear Entanglement Studies	706	-0-
o Alaska Salmon Enhancement Activities	3,766	-0-
o Limnological Research	282	-0-
o Yukon River Chinook Study	235	-0-
o Japenese Salmon Interceptions	141	-0-
o New England Stock Depletion Studies	612	-0-
Fisheries Industry Information		
o Economic and Commercial Fish Statistics	2,919	7,025
Information Analysis and Dissemination		
o Near-Shore Fisheries Research	695	16,930
o Data Analysis	222	
Conservation and Management Operations:		
Fisheries Management Programs		
o Regional Councils	3,766	3,700
o Columbia River Program	7,771	-0-
o Vessel Safety	38	-0-
o Manage Georges Bank Fisheries	471	-0-
Protected Species Management		
o Endangered Species Recovery Plans	235	3,753
o Harbor Seals and Sea Lions	36	
Habitat Conservation		
o Habitat Conservation	1,883	3,417
State and Industry Assistance Programs:		
Grants to States		
o Interjurisdictional Fisheries Grants	3,766	-0-
o Disaster Assistance Grants	1,883	-0-
o Anadromous Grants	2,354	-0-
o Striped Bass Research	471	-0-
o Interstate Fisheries Commissions	330	-0-
Fisheries Development Program		
o Fisheries Trade Activities	1,412	-0-
o Product, Quality & Safety Research (PQS)	4,143	3,721
o Fish Oil Research	942	-0-
o Menhaden/Surimi R&D	942	-0-
o Mahi Mahi Export Strategies	376	-0-
o Model Seafood Inspection Program	330	-0-
o Seafood Research Institute Feasibility Study	14	-0-
TOTAL, Fisheries Programs	-69,320	

OCEANIC AND ATMOSPHERIC RESEARCH

	Decrease	Remaining Base
o Reduce Regional Climate Centers	$1,205	1,138
o Reduce severe (mesoscale) weather research	282	6,600
o Reduce PROFS	1,883	2,000
o Terminate Weather Modification grants	2,212	-0-
o Terminate Seafloor Processes Research	1,695	-0-
o Reduce GLERL	1,507	3,000

	Decrease	Remaining Base
o Terminate FOCI program	942	-0-
o Terminate Sea Grant	36,720	-0-
o Terminate Nat'l Coastal Resources R&D Institute	1,177	-0-
o Terminate U.S.-Asia Aguaculture Science Exchange	282	-0-
o Terminate Undersea and Atmospheric Research	11,237	-0-
o Terminate Key Largo Tropical Research Facility	377	-0-
TOTAL, Oceanic and Atmospheric Research	-59,519	
NATIONAL WEATHER SERVICE		
Operations and Research		
o Emergency Power for NOAA Weather Radio	377	-0-
o Reduce Staff at Eight WSFO's	787	-0-
o Close Southern Region Headquarters	802	11,998
o Reduce Data Buoy Test & Engineering Activities	540	13,560
o Terminate Maintenance for Hawaii Data Buoys	565	-0-
o Consolidate Pacific Region HQ with Alaska Region HQ	383	3,817
o Terminate Agriculture Weather Service	942	-0-
o Reduce Fire Weather Services	282	1,300
o Terminate Fruit Frost Program	394	-0-
o Reduce Meteorological Technician Staffing	542	173,758
o Susquehanna River Basin Flood Warning System	1,883	-0-
o Reduce NWS Research and Development	320	2,782
Systems Acquisition		
o Reduce AWIPS	14,348	5,000
o Reduce ASOS	2,647	6,250
TOTAL, National Weather Service	-24,812	
NATIONAL ENVIRONMENTAL SATELLITE, DATA, AND INFORMATION SERVICES		
Satellite Observing Systems:		
o Discontinues NOAA-Port	3,484	-0-
o Discontinue Landsat 4 & 5 Operations	26,739	-0-
TOTAL, National Environmental Satellite, Data and Information Services	-30,223	
PROGRAM SUPPORT		
Marine Services		
o Close Southeast Marine Support Facility	282	-0-
o Reduce Fleet Rehabilitation Program	252	2,700
o Deactivate DAVIDSON, McARTHUR, ALBATROSS IV, OREGON II, JOHN N. COBB, MURRE II	4,607	-0-
o Reduce days-at-sea on DISCOVERER, RESEARCHER, SURVEYOR, MILLER FREEMAN, TOWNSEND CROMWELL, DAVID STARR JORDAN and DELAWARE II	1,062	-0-
o Marine Electronics Agenda	635	-0-
TOTAL, Program Support	-6,838	
TOTAL Decreases	**-240,836**	

Senator HOLLINGS. And they come up and use the language of what a great job they are doing, then if you eliminate the ships, and you eliminate the Sea Grant.

I was really intrigued by your observation on NIH and trying to keep the basic research. Sea Grant is where we get the basic research, Dr. Evans, and heavens knows you ought to know that.

But to come and use language to the effect that, "Well, the states can take care of it in their regions and all," that just couldn't be taken seriously. If you are doing away with the ships and the Sea Grants, the underwater research and all of these particular programs, what is the use of asking the questions?

We can submit the questions for the record, but when we come right down to it, we have got to go to work. We have got 9 more months of this nonsense.

Senator RUDMAN. We actually only have 11 legislative weeks, Mr. Chairman.

Senator HOLLINGS. That is right. I am looking to January of next year when we are going to start paying the bills again. Whoever is President, he is going to have 4 years of misery unless he does. I can tell you that. So we are going to have to start up government again, and our thing is a cut-and-paste and patch-and-reinsert kind of job and to get around so they come around. I don't know whether you caught it the other day, but I was looking in the Environmental and Public Works Committee bill on water quality and found they wanted the Environmental Protection Agency to designate estuarine areas.

That has been under Coastal Zone Management, and Dr. Evans, that has been your bailiwick. You eliminate it from your agency, and you are talking about the States picking things up. The other agency, the EPA, picks it up and they don't know what a nationally significant estuary is. They have got a provision and they have got money in there.

The designated entity of government to fill that particular function goes languishing with this language here, so it would be for the States and privatization. On the other hand, other Departments are beginning to pick them up, and there is where you get confusion in the government. You have got estuarine matters now before the EPA. That is a sad commentary.

You are not going to close these things down. We are going to be in underwater research and we will have Sea Grant. We will continue the Sea Grant program. That is the last thing I believe I would give up. Would you agree, Lowell?

Senator WEICKER. Sea Grant and Underwater Research, absolutely not.

Senator HOLLINGS. That is where you get basic science. That is where we get all the people get their expertise so they can properly inform us. We are not scientists, marine biologists, or otherwise. we have got to learn from you folks, and if we cut out that program, it is gone.

Do you have some questions?

Senator RUDMAN. We have some questions for the record which are technical in nature, and rather than take everyone's time, they are from Senator Specter, Senator Hatfield, and myself.

Senator HOLLINGS. Senator Inouye?

Senator INOUYE. I have been listening to the discussion so far. You have covered about three-quarters of my concerns. I looked over the budget summary, and I couldn't help but noting that the administration wiped out every Hawaii-designated project.

I just wanted to point out that we still do have a 50th State.

WEATHER SERVICE IN HAWAII

The other matter that concerns me is that the Weather Service, over the years, by cutting down the expenses, has, No. 1, done away with any hurricane surveillance programs. Now they want to cut out the data buoy programs.

We have flying above us over the Pacific a satellite. I think you call it GOES West?

Dr. EVANS. Yes, sir.

Senator INOUYE. There is one little bulb left. That one is ready to blow up. When that one goes, what happens to us?

You have nothing in the budget to assist us on weather projections, hurricane projections, and I just want to point out the State of Hawaii has been rather, I would say, inhibited in making demands over the years, because we are a new State.

We watched, for example, the treatment that was accorded to Mount Saint Helens when it erupted, $900 million. We have got eruptions every day in Hawaii.

Senator RUDMAN. Some aren't even volcanic. [Laughter.]

Senator INOUYE. We have got villages covered; homes covered; beaches covered, and we don't come around asking for help.

But our people would like to be able to sleep peacefully at night knowing that there is something up there that is going to give us at least 2 hours' warning to get out of bed and climb up the mountainside or something like that.

What about us? Every other State has warning systems.

Dr. EVANS. I can defer to Tom Pyke. I can briefly say one of the things that we are doing. We are very much aware of that problem. Initially I think the plan, and Tom can correct me on this, is to shift the position of GOES East in order to give us more coverage out in that direction, and one of the things that we may or may not be able to do, but that is to look very seriously at what the capability of the buoy systems are and reevaluate a number of things.

Senator INOUYE. But you are recommending that we wipe it out.

Dr. EVANS. That is the administration's wiping out the funding for it, but there may be some possibilities for other ways of renewing batteries or a number of things. I am not familiar with those programs, and as I told the Chairman and others, Senator Inouye, before you arrived, I am in the process of trying to review a number of these things and look at them.

I hope that I am given the opportunity to. I have my own personal biases, also. So as the new kid on the street, I am afraid some of those biases will come out. There may be some people that like or don't like them, but I happen to be pretty biased in the direction of oceans and in a number of other things.

I have had the privilege of working and doing research in Hawaii, and I think I understand some of the problems there. I think it is something that we have to look at, but Tom, would you like to address a little bit more what the solution might be?

Mr. PYKE. Yes, I would, Senator. We are certainly very concerned about maintaining adequate satellite coverage in the Hawaii area and in the western United States, the continental portion of the United States. We do anticipate that GOES West will come to the end of its natural life sometime during the next year and that the soonest we can launch its replacement will be in March of 1990.

So we will be back in a one-satellite situation, as we were for over 2 years, or early last year. What we have done to plan for this period of time is, first of all, to develop our plans, again, to move the operational GOES satellite into a more central location.

Senator INOUYE. Has that been decided upon?

Mr. PYKE. Oh, yes, sir. We definitely plan to move the operational GOES to a more central location, and, in fact, to move it, depending on the time of year, closer toward the West so that during the time of year in which we don't need it for direct coverage and immediate coverage of the hurricane season, that we can have it provide good coverage of the western United States and some of the oblique coverage of Hawaii, but definitely coverage from that area.

Senator INOUYE. I am definitely concerned about all of this oblique coverage we get around here. We would like to get direct coverage once in awhile.

Mr. PYKE. Senator, I assure you we are doing everything we can to get the next satellite on line as quickly as possible.

POLAR ORBITING SATELLITES

At the same time, we intend to make good use of our polar orbiting satellites that provide us with information to feed into the system in order to provide input to the national weather service to make up for that loss of the GOES West data as best we can until we can get the next GOES on line.

We will also rely on input from defense military at sites to the extent that that may do so for us.

Senator INOUYE. Which is zero.

Mr. PYKE. No, sir. We are able to make some use of that, and perhaps Dr. Friday can address that question to the National Weather Service activities. But we do have a share cost system.

Senator INOUYE. What about the months when we won't have any coverage when GOES West expires? Did you say we will have possibly another one up there in 1990?

Mr. PYKE. March 1990 is our current launch date for the next GOES satellite.

Senator INOUYE. So GOES West is going to go out next year, which is 1989. There is some time where we have nothing up there. What are the months so I can tell the folks back in Hawaii to be careful?

Mr. PYKE. Well, sir, you will never be without at least some coverage from the GOES satellites, because as I say, even during that period of time between which the GOES West does fail and the earliest possible time to getting the new GOES up there, we will be moving the one GOES over so that it does provide partial coverage, and we will be using our polar satellites in order to help make up for that difference during that period of time.

Senator HOLLINGS. I take it when you get partial coverage, we both know what that is.

Senator INOUYE. Oblique?

Senator HOLLINGS. Then we get partial coverage over here.

Mr. PYKE. This will be similar to the coverage that we did provide over a 2-year period up until last spring, when we will be able to get back to the normal two-GOES situation.

Senator INOUYE. In either Charleston or Honolulu. [Laughter.]

Senator INOUYE. We will give you partial coverage.

Senator HOLLINGS. Yes.

Senator INOUYE. And then we will give you partial uncoverage.

Senator HOLLINGS. Only if we get Honolulu weather down South.

Senator INOUYE. Mr. Chairman, if I sounded facetious——

Senator HOLLINGS. I know you are dead serious.

Senator INOUYE. It is very serious, and I wanted to cry about this. The folks back home are very much concerned, obviously. We have been hit by Tsunamis regularly; We have got volcanic eruptions regularly, and well, hurricanes, and now we find that the last bulb is going to go out and nothing is around. Get something done, please.

Mr. PYKE. We will try very hard.

Senator INOUYE. So I can tell the people in Hawaii they may be able to go to bed satisfied that there is someone watching over us?

Mr. PYKE. Yes, sir. We certainly will not leave them in a lurch, and we will maintain a back-up capability and get the new GOES on line as soon as we can.

Senator INOUYE. Just keep in mind, Senator Hollings and I will go two notches up in Appropriations next year. [Laughter.]

Senator HOLLINGS. Right. I thank you, Senator Inouye.

Senator Lautenberg?

LANDSAT

Senator LAUTENBERG. Yes. Thanks, Mr. Chairman. I am sorry for my late arrival. I just want to pursue, as you might guess, a brief discussion about Landsat. The negotiations have been going on, and I wanted to assess where we are.

The Commerce Department and EOSAT have been negotiating the Landsat contract since last year. They have an April 1 deadline to sign a contract on Landsat. I understand that the differences have been ironed out. Is the problem essentially behind us now, and is the Department ready to sign a contract with Landsat?

Mr. PYKE. Yes, sir. We have reached complete agreement with EOSAT on the contract modification.

Senator LAUTENBERG. OK. Does the contract deserve to be supported by the Appropriations Committee?

Mr. PYKE. Yes, sir, it certainly does.

Senator LAUTENBERG. Does approving this contract represent America's best hope of ensuring access to an independent source of remote sensing data?

Mr. PYKE. Yes, Senator. We believe it goes a long ways toward the type of commercial civil remote sensing system that we had envisioned some time ago, and it overcomes one of the obstacles that we have run into along the way.

Senator LAUTENBERG. So therefore, we are, in my view, left with the conclusion, Mr. Chairman, that we ought to approve this contract to preserve the impetus that has already gone into the Landsat program, and to make certain that we don't lose a substantial opportunity. Do you agree with that?

Mr. PYKE. I certainly agree.

Senator LAUTENBERG. All right. Do any of you have any comments to the contrary here?

Dr. EVANS. No, sir.

Senator LAUTENBERG. Does Senator Rudman agree? Yes. I heard him say yes. [Laughter.]

Do you believe that under the current plan a 1991 launch date is realistic?

Mr. PYKE. From all information available to us, we certainly do.

Senator LAUTENBERG. If we abandon Landsat now, would we be ceding a market to foreign competition?

Mr. PYKE. We would give the U.S. presence in civil Earth remote sensing to the French, to the Japanese and to other countries. They are just dying to take over from us.

COMMERCIAL USEFULNESS OF LANDSAT

Senator LAUTENBERG. Technologies of Landsat and foreign competition are being compared all the time in terms of their commercial usefulness. How does the technology from Landsat compare to data from other countries' programs?

Mr. PYKE. We are standing fast, sir. The capabilities included in Landsat 6, as we have agreed in the contract modification with EOSAT, are comparable to those that would be available in the same time period from other countries.

Senator LAUTENBERG. Landsat 4 and 5 have been operating longer than expected. This month, Landsat 5 began its fifth year of service. NOAA's fiscal year 1989 budget would terminate funding for the operation and maintenance of 4 and 5.

Give me your view of the status of Landsat 4 and 5? How much longer do you think they will operate?

Mr. PYKE. We have been very lucky so far with Landsats 4 and 5. Both of those spacecraft have exceeded their lifetimes, their normal lifetimes. We have had some minor degradation, as would be expected in the hostile space environment, and we do not know exactly when they will fail. They are degrading as expected, and we do not know when later this fiscal year, for example, either one or both of those spacecraft will die.

Senator LAUTENBERG. Are they still providing valuable data?

Mr. PYKE. Oh, they certainly are.

Senator LAUTENBERG. If one of these continued into fiscal year 1989, would the administration request funds for operational expenses?

Mr. PYKE. First of all, Senator, we are doing everything we can to stretch the available funds for operations of Landsats 4 and 5. We are doing this in conjunction with EOSAT so that they have good data to sell on a continuing basis, on a commercial basis, so that we hope to take available funds and stretch them at least a short while into the next fiscal year should Landsats 4 and 5 still be gathering at that time.

As far as any additional funding beyond that currently available, that wouldn't be considered until late next summer, when we get a much better feel for what the prospects would be to keep operations in the satellites going.

Senator LAUTENBERG. But as long as they can produce data as they are now, we would like to see them going. There is no reason to abandon those two satellites, is there?

Mr. PYKE. No, sir. There is no reason to abandon them, other than recognizing the fact that continuing their operation does represent a substantial cost.

Senator HOLLINGS. When you financially abandon them, that means they are going to quit; you don't have any money to continue them.

Mr. PYKE. That is correct, sir.

Senator LAUTENBERG. So you are saying the data are valuable; it is a question of cost effectiveness of gathering those data.

Mr. PYKE. Senator, actually, at this point in time, it is a matter of speculation, because we don't know how long Landsats 4 and 5 will last. As I say, we are doing everything we can to spread the available funds. It will be a matter to be addressed later on this year when we have a much better feel, when we can project what the lifetimes of Lansats 4 and 5 are.

Senator HOLLINGS. The budget reflects what you are saying that after September 30, it is not going to work, because you don't have any money to continue them. You tell us you don't know, but you tell us in this budget you do know: It is going to stop September 30. There is no money for it in fiscal 1989.

Senator LAUTENBERG. We know that. I hear a contrary message here, Mr. Chairman, and as we deal with these appropriations, we are going to have to make an evaluation whether or not we continue to develop this capability or whether we simply surrender it to others. It means developing new technologies or keeping the old ones.

Senator HOLLINGS. NOAA has eliminated $26,700,000 for the operations of Landsats 4 and 5. So in the conversation we are getting, we are talking about a stretch and everything else, but the actual budget——

Senator LAUTENBERG. Says no.

Senator HOLLINGS [continuing]. Says no.

Senator LAUTENBERG. Just say no. That will do it.

Thank you, Mr. Chairman.

Senator HOLLINGS. I thank you, Senator.

LANDSAT CONTRACT NOTIFICATION

The subcommittee has received letters from Assistant Secretary Bulow as well as a copy of a letter from Mr. Cook with the Air Force regarding the Commerce Department's Landsat commercialization contract with EOSAT and the use of a Titan II space launch vehicle for the Landsat 6 mission. The letters will be printed in the record at this point.

[The letters follow:]

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Administration
Washington, D.C. 20230

MAR 16 1988

Honorable John C. Stennis
Chairman, Committee on
  Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed is the recently negotiated modification to the Commerce Department's Landsat commercialization contract with EOSAT. It is being sent to you as required by Public Law 100-202, Continuing Appropriations for FY 1988. A funding plan for implementing the program is also enclosed. Key provisions and background are:

- The maximum total cost to the Government has been reduced from $257.5 to $256.5 million. The EOSAT contract now includes a provision for EOSAT to pay back to the Government the first $2.5 million of net earnings for each year beginning with calendar 1988, up to a maximum of $10.8 million. In addition, the Air Force launch cost has been reduced by $11.8 million relative to the cost shown in the October 1987 plan. Assuming full EOSAT payback, the net cost to the Government will be reduced to $245.7 million.

- One Landsat spacecraft (Landsat 6) and associated ground support system are to be developed at a cost not to exceed $220 million.

- EOSAT has waived all rights to data from follow-on civil remote sensing spacecraft beyond Landsat 6. This gives the Government full flexibility to consider all options for the future of the Landsat commercialization program beyond Landsat 6. Although the development of Landsat 7 is suspended through this contract modification, the Government has the right to have EOSAT develop Landsat 7, in which case EOSAT will have the rights to Landsat 7 data.

- The spacecraft will use an advanced TIROS-N design and will be launched on a Titan II vehicle in June 1991. Commerce will reimburse the USAF for launch costs.

- The enclosed funding plan is consistent with this contract modification, the total Air Force launch cost commitment, and the FY 1989 President's budget.

Thank you for your continued interest in the programs of the Department of Commerce.

Sincerely,

Kay Bulow

Kay Bulow
Assistant Secretary
  for Administration

Enclosures

DEPARTMENT OF COMMERCE

Revised Landsat Commercialization Funding Plan

(Budget Authority in Millions)

				Fiscal Year			
	1986 & Prior	1987	1988	1989	1990	1991	Total
Revised Plan: (Oct. 1, 1987)							
Landsat Commercialization:							
Spacecraft	90	62.5[1]	30.2	20.0	6.5	...	209.2
Launch....................	...	...	4.0	14.1	30.2	...	48.3
Total..............	90	62.5[1]	34.2	34.1	36.7	...	257.5
Revised Plan (March 9, 1988)							
Landsat Commercialization:							
Spacecraft................	90.0	62.5[1]	10.0[2]	20.6	36.9	...	220.0
Launch....................	...	...	...	13.5	15.0	8.0	36.5[3]
Total..............	90.0	62.5[1]	10.0	34.1	51.9	8.0	256.5

---

1. Includes $35 million reprogrammed from the polar-orbiting program.
2. Presumed available from DOD FY 1988 appropriation.
3. Titan II launch costs are based on a USAF letter dated March 9, 1988.

DEPARTMENT OF THE AIR FORCE
WASHINGTON, D.C. 20330-1000

March 9, 1988

Mr. Thomas N. Pyke, Jr.
Assistant Administrator for Satellite
 and Information Services
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
Washington, D.C. 20233

Dear Mr. Pyke:

This letter provides further details on the use of a Titan II space launch vehicle for the Landsat-6 mission. In response to your request, the Secretary of the Air Force approved an additive cost policy for NOAA space launches on Titan II, similar to the existing arrangements now in effect for your use of converted Atlas-E boosters for the polar meteorological satellite program.

Attached is a budget profile for the Landsat mission in June 1991, consistent with the additive cost policy. We are willing to accommodate the Landsat-6 launch, and will inititate planning for contractual action in Fiscal Year 1989 upon a formal commitment from your agency.

Sincerely,

CHARLES W. COOK
Deputy Assistant Secretary
Space Plans and Policy

1 Attachment
Landsat-6 Budget

cc: RAdm Truly

LANDSAT-6 BUDGET

TITAN II SPACE LAUNCH VEHICLE - JUNE 1991 LAUNCH

	Budget Requirements ($ in millions)			
ACTIVITY	FY 89	FY 90	FY 91	TOTAL
Integration to Titan II	2.0	2.0	1.0	5.0
Titan II hardware	9.8	11.8	.4	22.0
Engineering Change Orders	1.2	.7		1.9
Aerospace Technical Services	.5	.5	.5	1.5
Launch Incentives			2.1	2.1
Propellants			3.0	3.0
Range Support Costs			1.0	1.0
TOTAL	13.5	15.0	8.0	36.5

Notes:

1. This estimate is based upon the existing Titan II SLV program, and assumes that no booster modifications for the mission are necessary. Any unique modifications for the Landsat mission would be additive.

2. The Engineering Change Order budget is designed for booster changes as a result of activities in the launch program. This amount may be more or less than the budgeted value, depending on the need for changes during this period.

3. Range Support Costs include Air Force provided launch site payload support services/facilities.

CALIFORNIA COASTAL COMMISSION

Senator HOLLINGS. I have got a letter from Congressman Panetta with regard to the language that is in the Continuing Resolution on the Coastal Zone Management grant to the California Coastal Commission.

Let me read a part of that letter, and I quote,

> Contrary to what I believe was the intent by the sponsors of the language in the Continuing Resolution, the Commerce Department released the administrative part of the State's Coastal Zone Management grant but required the Commission also accept a series of conditions on its significant improvement grant in order to obtain administrative funds. These conditions are essentially designed to force the California program to undergo a reapproval process and to limit its ability to handle consistency determinations on the flexibility case-by-case basis.

Both Senators Cranston and Wilson, as well as Congressman Edwards and Congressman Panetta, wrote to Secretary Verity back in January; I think it was on January 21. They protested the Department linking the administrative grant to the significant improvement grant because, in essence, what that does is just amend the law.

We went through this whole thing; it has been approved in law and approved by every administration until now. You had what we call the Federal Consistentency Provision.

The Federal Government signed off when they approved that State plan. Now they come around behind the Federal approval of the State plan and put in grants conditioned upon certain disapproval, which the conditions amount to. It is an amendment of the law, and we are not going to stand for it. Do I understand that the Secretary answered that letter?

Dr. EVANS. I don't really know whether he has or not, Mr. Chairman. The State of California, as you know, brought suit against Secretary Verity and Curtis Mack and others that were involved in this particular issue. It is my understanding as of this morning, I was informed that we are still in litigation and that the counsel, although I am not very privy to most of the information anyway, the counsel, our legal counsel has asked that I not comment because of the fact that it is in litigation.

Senator HOLLINGS. You can answer correspondence from a Congressman and a Senator as a group. What is the answer to the letter to the Secretary? He doesn't have any answer?

Dr. EVANS. I have not seen any answer coming from the Secretary yet, sir. In fact, I just became aware of that letter this morning, sir.

Senator HOLLINGS. Well, let's see if you can get an answer by this afternoon or sometime tomorrow morning. We will get that counsel up here and teach him that this is Congress over here, and we want answers to our questions.

Dr. EVANS. We will take care of it.

Senator HOLLINGS. We aren't going to wait on legal motions. You think I ought to go out and employ a lawyer to get an answer from you folks?

Dr. EVANS. I was just told by Dr. Peterson that Secretary Verity has written an answer to that.

Senator HOLLINGS. I would appreciate a copy of that, and you're also submitting a copy for the record.

CORRESPONDENCE

Dr. EVANS. We will get that to you, sir.

Senator HOLLINGS. Because we are not going to allow circuitous amendment of the law by now imposing conditions which the Department, under the law, has already signed off on. They can't start giving conditional grants.

[The information follows:]

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

MAR 23 1988

IDENTICAL LETTER SENT TO SENATOR CRANSTON, SENATOR WILSON & CONGRESSMAN EDWARDS

Honorable Leon B. Panetta
House of Representatives
Washington, D.C. 20515

Dear Mr. Panetta:

Thank you for your cosigned letter regarding the Commerce Department's grant to the State of California under section 306 of the Coastal Zone Management Act. The Department made every effort to reach an agreement with the California Coastal Commission. For example, during negotiations at the request of the State, the Department agreed to move four operational conditions, involving some $115,000 to the significant improvements section of the grant, allowing the Commission to accomplish them without using operational funds. The Department also agreed to extend several compliance dates by as much as one year.

On December 21, 1987, after extended negotiations with the Commission staff, the Department issued an amendment to the California grant releasing all remaining funds. As is the Department's responsibility under law and standard administrative practice, conditions to implement the recommendations of the most recent evaluation of the California Coastal Management Program were attached to the grant. The tasks, terms, and conditions placed on the grant are a reasonable and prudent approach to resolve the serious issues raised in the evaluation and are designed to bring the California Coastal Management Program into compliance.

With one exception, we believe the grant, as issued, represents a negotiated agreement between the Commission and NOAA. The one area where we were not able to reach an agreement with the Commission staff was our request that the Commission adopt guidelines regarding its interpretation of the California Coastal Act policies as they affect outer continental shelf activities. We agreed to give the Commission two years to adopt either advisory or binding guidelines and to provide grant funds to accomplish the task.

The Commission's action to challenge provisions of the grant in U.S. District Court is regrettable. The grant complies with all applicable requirements of law, including the Coastal Zone Management Act and Public Law 100-202. We fully expect to prevail in this suit. However, I prefer that NOAA spend its energies to resolve differences rather than to engage in litigation. NOAA is ready to continue negotiations with representatives of the State when requested.

We firmly believe that the Commission's fulfillment of the tasks, terms, and conditions set forth in the grant is essential to bring the California Coastal Management Program into compliance.

Sincerely,

C William Verity

Secretary of Commerce

Senator HOLLINGS. But let me say with respect to the news report on the porpoise killed during the foreign tuna slaying operations in 1984 that we passed the Marine Mammal Protection Act, and we put conditions on any nation which exports tuna into the United States. The Act requires each State to have a regulatory program for the protection of the marine mammals.

Yet I think the Commerce Department just issued a rulemaking. You all found out you were going to be called to a hearing, so you started to work, answering letters and issuing rules. Maybe that is what the hearing is good for.

Anyway, why has it taken 4 years to implement these regulations?

Dr. EVANS. There has been a lot of discussion on the regulations. The new regulation package has just—I think it came out about a week ago—come out of OMB, and has now been published, I believe, and we are in the process of dealing with our people out in the Southwest Region and will start to implement those regulations as fast as we possibly can.

That has been a very contentious issue with a lot of people on various sides. It has gone back and forth; it has been discussed in committee, as well as in hearings, and we are very pleased to see that we have a set of regulations that have been approved and that OMB has released them now and that we can go ahead and start to enforce.

Senator HOLLINGS. But we have it, and the U.S. fleet has complied with it, and we have got a kill ratio there. Now we come around to the foreign fish and we are giving them an additional 3 years to come up to the kill ratio of the American fleet. Why is that?

Dr. EVANS. I am not too sure what the rationale was, sir, on that. However, I have not read the most recent set of regulations. They are being reviewed right now in house, and I will look at them. I have sort of been, I was very much involved in the initial aspect of the porpoise issue, and I am now getting back into it again. So I will, if you would like, I would like to, prefer to, be able to get back to you in writing——

Senator HOLLINGS. We would appreciate it.

Dr. EVANS [continuing]. To provide some details on where we are with this and where we plan to go and what sort of program for porpoises will be in place.

[The information follows:]

MARINE MAMMAL PROTECTION

The original proposed tuna import regulations to implement provisions of the Marine Mammal Protection Act were published by the National Marine Fisheries Service [NMFS] in the Federal Register on August 13, 1986. Many comments were received from environmental organizations, United States tuna processing companies, and trade organizations, as well as from the Marine Mammal Commission and congressional offices. These comments raised a broad spectrum of concerns about the proposed regulations, from stating that they were much to weak and vague in establishing comparable program and kill rate standards, to pointing out requirements that would necessarily adversely affect United States canners. The NMFS took these comments very seriously, and because of the complexity of devising a fair method of comparing kill rates as contemplated by the amendment, NMFS invested considerable time working on the many other points made by commentators to revise the proposed regulations.

Because a key to the successful implementation of the amendment is the collection of reliable and accurate information from the foreign fishing countries, NMFS has had to spend a great deal of time on this aspect. With the cooperation of the IATTC, NMFS thinks that it has developed standards for providing this information which will produce the quality of data required.

While NMFS has taken longer to publish the final regulations than we and many others wanted, the time has been well spent in responding to the many valid concerns raised on the original proposed regulations. We believe that the final regulations are stringent enough to protect porpoise and comply with the terms of the NMPA and Congress' intent, but are not so unrealistic as to force foreign countries which are trying to act responsibly to abandon the United States as a market for their tuna, and thus frustrate the intent of the amendment.

These regulations, which were published as interim final regulations on March 18, 1988, can realistically be expected to result in a lowering of the rate of porpoise being killed by foreign countries, while also providing the United States with better information. The requirement for a comparable porpoise protection program applies to foreign countries immediately (within a 6-month grace period for certification applications to be considered), but the comparable kill rate test will be phased in for use as a basis for prohibiting imports in 1991. In the interim, foreign countries' kill rate trends will be monitored, and inadequate performance could form the basis for banning imports. As long as the foreign countries stay in the program, a reduction in kill should be noticed each year as porpoise saving gear and rescue techniques are more effectively utilized.

NOAA VACANCIES

Senator HOLLINGS. I thank you. What about the Deputy Administrator of NOAA? That has been vacant quite some time, and are you looking for someone familiar with the agency to fill that vacancy? Do you know anything about that?

Dr. EVANS. Yes, sir. We have four names on a list at the present time which are being looked at, and when I am in a position to be able to look at them closely, right now, I have just been reviewing them. But we do have four very, very strong candidates, and all four of those candidates we have at the top of the list are from within the agency or within the Department of Commerce, actually, mostly from the agency. Most of them are from the agency.

MARINE RESEARCH

Senator HOLLINGS. Finally, Dr. Evans, we see where Senator Mitchell introduced S. 2068. That is the Marine Research Act of 1988. That creates regional marine research centers to be administered by the Environmental Protection Administration. They do that because you folks are eliminating Sea Grant and everything else like that.

You see, these regional centers would duplicate the Sea Grant efforts. So you go down in one budget and up in another. Maybe you all don't do that well with OMB, but if Commerce and OMB eliminates the NOAA endeavor, then they come around and start putting it in other agencies.

This is the frustration that we have, because this has been going on, now; this is the eighth year, the demise and abandonment. I would appreciate your sincerity in trying to get something done.

Dr. EVANS. Mr. Chairman, I have some very serious concerns about that, also. Our staff is trying to work very closely with committee staff—if they aren't, they will be—to incorporate NOAA into that bill or any other bill that comes up that has to do with Coastal Zone and things that come under our mandate. I can promise you that; that we will look at it very closely and try to get ourselves involved in it.

I think there is a lot of duplication, not only in this, but in some other things, and there are some things that are under our mandate, and these are things that I plan to discuss with staff and also will work very closely with both the House and the Senate committee staffs, who are interested in this area, so that we come up with something so that we don't have the duplication of effort.

We are in a period of time right now where we are trying to reduce budgets and deficits. It seems as though this is really not the right time to come along and start putting things that double up the emphasis on some important areas. We need to concentrate our efforts.

1989 BUDGET

Senator HOLLINGS. The President agreed in the Summit Agreement to a 2-percent increase on domestic spending of $8.5 billion. So you can talk about elimination, but when he wrote this budget at Christmas time for 1989, he says, "We can all get together now and we are going to increase spending," and we have agreed to a domestic increase of $8.5 billion or 2 percent in these budgets.

Yet you come up and you give us 4 pages of eliminations, and say that we are going to put this back to the States. We hope if they do make a profit we will keep the satellites in the sky, and "Oh, by the way, we will move this satellite over here to give Hawaii a little better weather report." It sounds like a rinky-dink operation to me. It is sad, because this has been one of the best endeavors we have ever had, and somehow or the other we are leaving it.

CONSOLIDATION OF SILVER SPRING METRO CENTER

I have got something else. Tell us about the Silver Spring Metro Center now. You identified that in November as a site of consolidation of NOAA. GSA purchased the first four buildings, and what are the plans and where are we now with respect to consolidating NOAA, whereabouts and how? What is your program?

Dr. EVANS. OK. Sir, I will summarize how I have approached the program, and I have the corporate member here of this whole program. Assistant Secretary Bulow, who you know, is here, and I will ask her to address some of those. But what I have done is due to the concerns expressed by a number of the Members of Congress, the GSA, the Department of Commerce, the Acting Inspector General and a number of others, I established a study team to evaluate the original NOAA/DOC plan to consolidate the headquarters functions of NOAA in Building I in Silver Spring, at the I.G.'s recommendation, the alternative of placing the National Weather Service in Building I, and then have them look at other possibilities of options to fill Building I that would result in the maximum consolidation of NOAA at the least expense.

Alternative one to the original plan was supposedly to improve the information flow and give us a better integration and coordination of program activities. The plan, however, has had some problems with gaining support from OMB and congressional support from a number of people who are concerned that the plan would not release space in the Hoover Building, which conflicts with the intent of GSA's building opportunities program.

The benefits of having NOAA's top managers together may outweigh the benefits of keeping them there with their respective organizations. One of the problems I have with some aspect of this is that the managers are not the ones who make the things happen within the organization, NOAA or otherwise. It is science-based; it is the scientists. So I have a concern about getting the maximum number of scientists together, because if you have one scientist, you may not get very much productivity. You put three of them together, and you generate a lot of ideas, and you have to have a critical mass.

Senator HOLLINGS. I can understand that about science, Doctor, but when you come right down to it, to the managers, if I am going to manage, whether it is the Marine Fisheries or the Ocean and Atmospheric Research or any of the other particular endeavors, I would like to be in the same place as my troops. You don't want to take and have all the platoon commanders back at headquarters.

Dr. EVANS. That is right, sir. That is alternative three, which is the one that I support, to begin the consolidation of NOAA that would avoid all of the disadvantages that I talked about. One of the things that we suggested is that we would move not functions but organizations so that the leadership and the organization is there. The building will support all OAR. OAR is going to be working with the Global Change program, very closely with the Weather Service, which is now in the Grammax Building. The Grammax Building, the Weather Service would not fit into Building I. However, Building II will be coming on line about that time. About 6 months from the time we would have all of Building I full, Building II would be available.

We would then move the Weather Service out of that into a building specially designed for them. They have some very special needs there.

We would also move all of the National Marine Fisheries Service with their Assistant Administrator, all of their staff, everyone else, into Building I, because what other units we could possibly get out there with the leadership with troops. So we want to make the maximum utilization of that, and I don't want the leadership one place and the troops someplace else.

LETTER FROM SENATOR HARRY REID

Senator HOLLINGS. The subcommittee has received a letter from Senator Harry Reid of Nevada with regard to the programs in NOAA's fiscal 1988 budget, that he supports continued funding for in 1989. The letter will be printed in the record at this point.

[The letter follows:]

JOHN C. STENNIS, MISSISSIPPI, CHAIRMAN

ROBERT C. BYRD, WEST VIRGINIA
WILLIAM PROXMIRE, WISCONSIN
DANIEL K. INOUYE, HAWAII
ERNEST F. HOLLINGS, SOUTH CAROLINA
LAWTON CHILES, FLORIDA
J. BENNETT JOHNSTON, LOUISIANA
QUENTIN N. BURDICK, NORTH DAKOTA
PATRICK J. LEAHY, VERMONT
JIM SASSER, TENNESSEE
DENNIS DeCONCINI, ARIZONA
DALE BUMPERS, ARKANSAS
FRANK R. LAUTENBERG, NEW JERSEY
TOM HARKIN, IOWA
BARBARA A. MIKULSKI, MARYLAND
HARRY REID, NEVADA

MARK O. HATFIELD, OREGON
TED STEVENS, ALASKA
LOWELL P. WEICKER, Jr., CONNECTICUT
JAMES A. McCLURE, IDAHO
JAKE GARN, UTAH
THAD COCHRAN, MISSISSIPPI
ROBERT W. KASTEN, Jr., WISCONSIN
ALFONSE M. D'AMATO, NEW YORK
WARREN RUDMAN, NEW HAMPSHIRE
ARLEN SPECTER, PENNSYLVANIA
PETE V. DOMENICI, NEW MEXICO
CHARLES E. GRASSLEY, IOWA
DON NICKLES, OKLAHOMA

FRANCIS J. SULLIVAN, STAFF DIRECTOR
J. KEITH KENNEDY, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

March 17, 1988

The Honorable Ernest F. Hollings
Chairman
Subcommittee on Commerce, Justice, State,
The Judiciary and Related Agencies
Committee on Appropriations
S146-Capitol
Washington, D.C. 20510-6025

Dear Chairman Hollings:

Last year you were more than generous in earmarking funds from the fy '88 budget of the National Oceanographic and Atmospheric Administration for three studies personally important to me. These three programs are: the limnological study at Lake Mead; a regional climate center in Nevada; and state weather modification activities. All three of these programs provide great scientific benefits to the State of Nevada as well as the entire Nation. I respectfully request that funds again be earmarked for these three projects when the Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies marks-up legislation for fy '89.

National scientific attention has focused on the limnological study becasue of its success in demonstrating the viability of restoring the ecological balance of America's inland lakes. Researchers from the University of Nevada, Las Vegas, have assured me the limnological study will be completed in another year. Accordingly, I request $400,000 be earmarked for the Lake Mead limnological study in fy '89.

I also support continued funding of the regional climate center and the weather modification program, both managed by the Desert Research Institute of Reno, Nevada. An earmarkation of $320,000 and $550,000 respectively will be sufficient to fund these two programs in fy '89.

I appreciate your favorable consideration of my requests. Please feel free to contact me if you have any questions or require additional information.

With all best wishes,

Sincerely,

Harry Reid

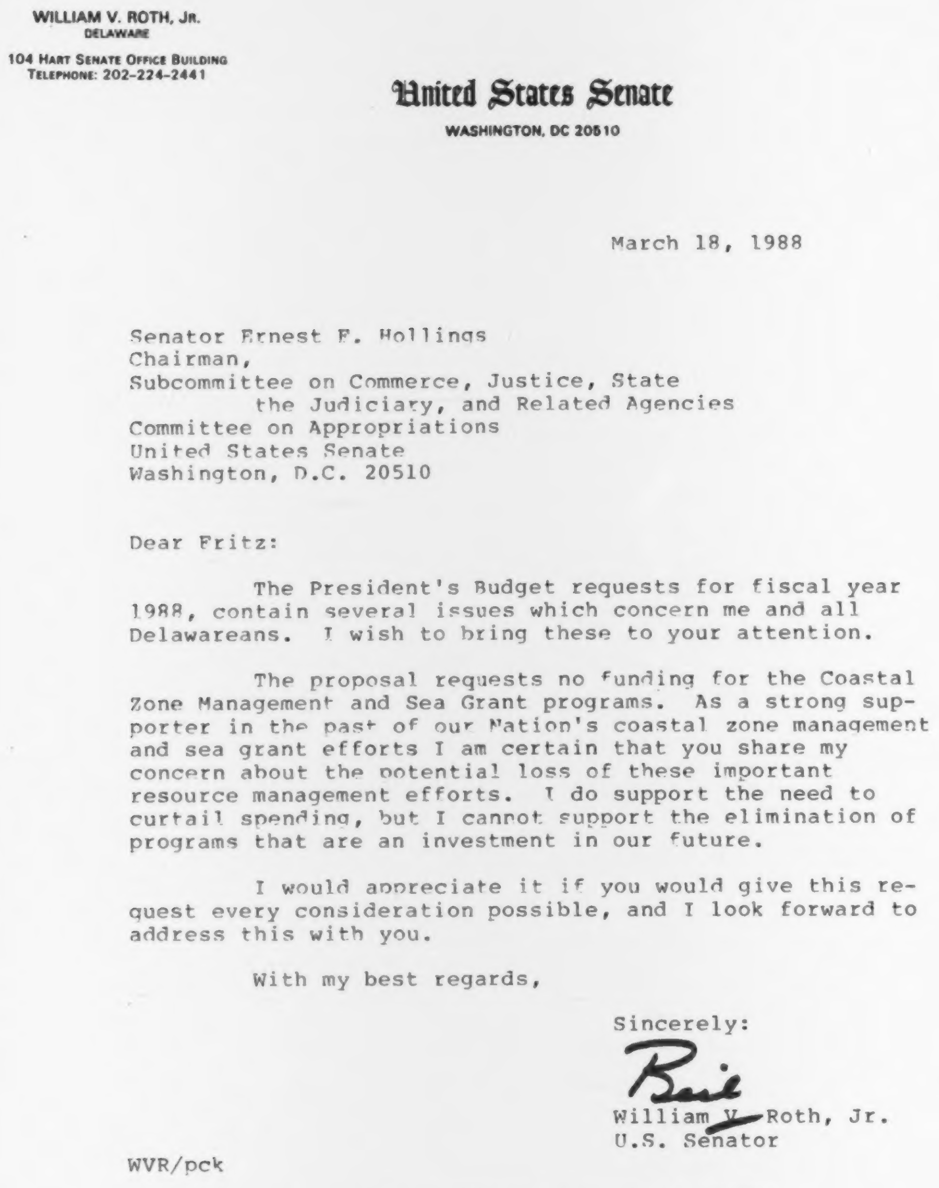
HARRY REID
United States Senator

HMR/jlg

LETTER FROM THE HONORABLE WILLIAM V. ROTH, JR.

Senator HOLLINGS. The subcommittee has also received a letter from Senator William V. Roth, Jr. with regard to Coastal Zone Management and Sea Grant programs. The letter will be printed in the record at this point.

[The letter follows:]



WILLIAM V. ROTH, JR.
DELAWARE

104 HART SENATE OFFICE BUILDING
TELEPHONE: 202-224-2441

United States Senate
WASHINGTON, DC 20510

March 18, 1988

Senator Ernest F. Hollings
Chairman,
Subcommittee on Commerce, Justice, State
the Judiciary, and Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Fritz:

The President's Budget requests for fiscal year 1988, contain several issues which concern me and all Delawareans. I wish to bring these to your attention.

The proposal requests no funding for the Coastal Zone Management and Sea Grant programs. As a strong supporter in the past of our Nation's coastal zone management and sea grant efforts I am certain that you share my concern about the potential loss of these important resource management efforts. I do support the need to curtail spending, but I cannot support the elimination of programs that are an investment in our future.

I would appreciate it if you would give this request every consideration possible, and I look forward to address this with you.

With my best regards,

Sincerely:

Bill

William V. Roth, Jr.
U.S. Senator

WVR/pck

LETTER FROM THE HONORABLE WILLIAM S. COHEN

Senator HOLLINGS. The subcommittee has received a letter from Senator William Cohen with regards to National Weather Service Forecast Offices. The letter will be printed in the record at this point.

[The letter follows:]

WILLIAM S. COHEN
MAINE

United States Senate
WASHINGTON, DC 20510

March 23, 1988

Honorable Ernest F. Hollings
Chairman
Senate Appropriations Subcommittee on
Commerce, Justice, State, the Judiciary
and Related Agencies
S146A-Capitol
Washington, D.C. 20510

Dear Mr. Chairman:

Once again, the Administration has proposed reducing the staff at several National Weather Service Forecast Offices, including one in Portland, Maine. Once again, I am writing to request that you reject the Administration's proposal as you have during previous budget deliberations.

As I have argued in the past, the reduction of staff and services at the Portland office is "penny-wise and pound-foolish", for it will only lead to greater stress on the weather reporting systems on the east coast. A loss of staff translates directly into a loss of accuracy and timeliness for residents of Maine and New Hampshire whose work is weather-related. The maritime report for the New England coastal area and the agricultural forecast for northern Maine are crucial to the livelihoods of many citizens.

The timeliness and accuracy of weather reports is also important in preventing disaster and havoc from occurring in the event of inclement weather. Last spring, for instance, devastating floods hit many parts of Maine, causing $64 million in damages. Remarkably, however, no loss of life occurred. In large part, this was a result of the advanced flood warning provided by the Portland Weather Service Office.

In addition, during the past three winters, 98 per cent of all heavy snowstorms in Maine and New Hampshire were preceded by the announcement of a Winter Storm Warning from the Portland office. This record is certainly commendable and would be compromised if staffing was reduced.

I hope you will review the Administration's proposal with these factors in mind, and continue your excellent support of the National Weather Service.

Thank you for your attention to my request.

With best regards, I am

Sincerely,

William S. Cohen
United States Senator

WSC:kbd

LETTER FROM AMERICAN FISHERIES SOCIETY

Senator HOLLINGS. The subcommittee has received a letter from Mr. Carl R. Sullivan, Executive Director of the American Fisheries Society with regard to National Marine Fisheries Service. The letter will be printed in the record at this point.

[The letter follows:]

AFS American Fisheries Society

STANLEY A. MOBERLY
President 1987-1988

CARL R. SULLIVAN
Executive Director

PAUL BROUHA
Deputy Director

March 21, 1988

The Honorable Ernest F. Hollings, Chair
Appropriations Committee
Sub. Commerce, Justice & State
SR-125 RSOB
Washington, DC 20510-4002

Dear Senator Hollings:

The American Fisheries Society (AFS) appreciates the opportunity to submit these written comments concerning the proposed Fiscal Year 1989 budget for the National Marine Fisheries Service (NMFS). We ask that these comments be included in the official record of the hearing.

The AFS was founded in 1870 and is the world's oldest organization of fisheries scientists, having been active for 118 years in fisheries research, scientific publishing, conservation, and enhancement. The AFS is also the largest fisheries organization with over 8,500 members who are employed by public agencies at the state, federal, and international level, as well as by educational institutions and private industry.

Before we comment on the specific proposal for the NMFS FY 1989 budget, it will be helpful to briefly review some facts about the nation's living marine resources and NMFS, the federal agency assigned responsibility for their protection, conservation, management, and development.

The living marine resources occurring within the Exclusive Economic Zone of the United States include 15-20 percent of the world's traditionally harvested fishery resources. The current value of the commercial use of these resources alone is represented by annual landings worth over $6.3 billion at the retail level. These living marine resources also support a recreational fishery with an annual economic value estimated at $13.5 billion, along with a large and growing non-consumptive sector which has placed a high social value on these resources, particularly the marine mammals. The significance of fisheries products to the nation is further indicated by the consumer demand which resulted in a record level of imports of edible and nonedible fishery products in 1986 of $7.6 billion. Exports of U.S. fishery products amount to $1.4 billion, making the resulting $6.2 billion trade deficit in fishery products one of the most important factors in this nation's overall trade deficit.

A unique characteristic of the nation's living marine resources is their inherent renewability, where with proper management they are not depleted through use as is the case with most natural resources, but are capable of a sustained level of productivity year after year. The renewable nature of these resources means that a continuing stream of benefits to the nation can be realized through assuring the continued maximum biological productivity of these living resources and their optimum utilization by their multiple, often competing users. Achieving this productivity from living marine resources also requires protecting and conserving their habitat, which is the foundation for this resource productivity, along with controlling their rate of utilization.

For over one hundred years--even before the major regulatory and development legislation of the 1970s and 1980s became law, the federal government recognized the need to be involved in the resolution of fisheries issues and maintained a federal fisheries agency. Over the years the threats to the resources have become greater and the issues more contentious. It is incongruent that the fisheries program should continue to be proposed for more than a 45% reduction at a time when the need for information and sound resource management has never been greater. This shortsighted proposal mortgages the future of our fishery resources, their environment, and those who depend on them for livelihood, protein, and recreation. The federal fisheries program is not a superfluous expense, it is an investment in the maintenance and wise utilization of a priceless, publicly-owned renewable natural resource which can be, and indeed in some cases is being, destroyed by misuse or mismanagement.

The future of the nation's fisheries revolves around two key concepts: (1) the renewable but vulnerable nature of living marine resources which requires appropriate conservation and management to assure their continued productivity and future availability, and; (2) multiple use of these resources, which requires informed decision-making and coordinated response within all levels of government and industry. It is the responsibility of government, as the resource manager, to support research and services which provide timely and accurate resource and fishery information, including information on the distribution and abundance of the resources, harvestable surplus, the domestic and international market trends, the condition of critical habitat, and the other very basic information necessary for the conservation of fisheries resources and protected species. Based on this information, and in consultation with the industry and the public, it is the further role of government to formulate, or participate in the formulation of, fishery management plans, protected species management plans, habitat conservation programs, and fishery restoration, enhancement and development policies and programs to achieve optimum yield from the resources.

The central responsibility of the federal government is to ensure that the nation's living marine resources are not depleted and remain a productive natural resource for current as well as future generations. If the government conducts its living marine resource management and service activities in a manner which fosters and supports private sector initiatives, and which allows for efficient utilization of fishery resources, the result should be solid long-term growth in productivity from these resources as well as economic return for the industry and the nation. Benefits include: jobs, profits, export earnings, subsistence recreation, a better nourished populace, a healthy and productive marine ecosystem, and the protection of marine mammals and threatened and endangered species.

If we expect to continue enjoying the bounty of the sea, then we must be good stewards. Indeed, we should be expanding rather than reducing our efforts to conserve and manage living marine resources. It is difficult for us to understand why this nation would fail to fund and adequately staff the one agency with the mission and expertise to properly manage this priceless renewable food and recreational resource.

Since NMFS was transferred in 1970 to the Department of Commerce (National Oceanic and Atmospheric Administration, NOAA) from the Department of the Interior (Fish and Wildlife Service), the Agency has never been adequately funded to carry out the increasing number of major new responsibilities delegated to it by Congress, and its programs have been repeatedly proposed for reduction or elimination.

Throughout its existence, the NMFS (and its predecessor federal fishery agencies) have adjusted to the demands placed upon it. In the 1800s and early 1900s there was a need to describe the composition and distribution of the nation's fishery resources. In the 1950s and 1960s there was a need for exploratory fishing to identify new fishing grounds for traditional fisheries, to assist industry in developing nontraditional resources, and to negotiate international treaties to protect and ensure U.S. access to distant water resources. In the 1970s and 1980s the focus changed to domestic fisheries management with the need to explain why traditional stocks were decreasing and to allocate limited resources among competing users. NMFS programs currently provide a comprehensive and integrated approach to ensuring the continuing productivity of the nation's living marine resources and the economic viability of the resource-dependent industries.

To the great credit of the people of NMFS, much has been accomplished in spite of often challenging technical, political, and program funding problems. Achievements have come through exemplary efforts of the agency's professional staff and successful appeals to states and industry to assume some of the burden for supporting these federal functions. NMFS even utilized foreign fishermen to gather stock assesment data in connection with granting them fishing rights in the U.S. E.E.Z. (although this source of program support is disappearing as management efforts are successful in phasing out foreign fishing in U.S. waters and funds are lacking to fill this information void).

With the thought that Congress and the public need to better understand the agency's responsibilities and program needs, a summary of NMFS budgetary resources since

1970 along with a partial chronological list of major new legislative actions which have significantly increased the agency's responsibilities during that time is provided in Figure 1. Many of the less burdensome acts which also expanded existing programs, added administrative or procedural requirements, or in general increased NMFS work load have not been listed. Incredibly, over this period NMFS was given (through new legislation, amendments to existing legislation, and as a result of certain court decisions) enormous work loads which should have justified significant budget increases. Instead, since 1979 the NMFS budget has been decreasing each year, in constant dollar value terms. Many new assignments have been thrust upon NMFS, forcing endless reorganization and suboptimization of existing programs, while cannibalizing one program after another. In magnitude of the program changes, short time during which they have occurred, and the lack of management support within the Executive Branch, the accomplishments of the NMFS professional staff in meeting the mandates of Congress are an amazing success story. We urge the Committee to give special attention to Figure 1 when deliberating an appropriate funding level for NMFS.

Under existing budgeting procedures, no official of the NMFS is permitted to come before the Congress and identify the fiscal resources which are truly necessary for effective and equitable management of our nation's renewable living marine resources. Every Administration must control budget requests, yet there must be communication between Congress and professional public servants on these vital resource needs. We believe that Congress should conduct oversight hearings to document the dollars and staffing (including scientists, other professionals, support personnel, laboratories, research vessels, equipment, and funds) necessary to adequately manage the nation's fishery resources.

The proposed NMFS budget for FY 1989, if enacted, would cut in half a program that has successfully served the nation's fisheries for over one hundred years. Throughout its existence, the NMFS fisheries program has had the resourcefulness to meet the demands placed upon it. However, it will be impossible, even for NMFS, to accomplish the intent of Congress for the conservation, management, and development of the nation's living marine resources within the budget proposed for fiscal year 1989.

The American Fisheries Society urges Congress to, at a minimum, restore the proposed reductions in the NMFS budget in order to maintain current program levels.

BUDGET ITEMS OF GREATEST CONCERN

Information Collection and Analysis

(FY 1989 Base $102,216K; Budget Request $64,059K)

This subactivity provides for the vital resource research and management information activities of NMFS. With these funds NMFS collects and analyzes a broad range of information on fishery resources, protected species, living marine resource habitat, and fishing industry activities. The Administration is seeking a $38.2 million reduction in this work. We believe this proposed reduction is totally indefensible in light of the increasing complexity of ocean use and fisheries allocation issues and the associated demands for increasing quantity and quality of information for their equitable resolution. For example, as available information decreases, fisheries managers must become more conservative in regulating allowable harvest levels to protect the stocks. With more accurate information the manager can set harvest levels closer to maximum economic yields, thus returning the government's investment in fishery research many times over.

Some specific effects of the proposed cuts with which the AFS takes issue are as follows:

The proposed reductions in resource survey activities ($1,883K) and New England stock depletion research ($612K) will further limit fishery independent information acquisition efforts already operating at a marginal level relative to current data user demands. This reduction would eliminate the resource surveys of south Atlantic reef fishes conducted for recruitment studies, ecosystem model development and related biological studies necessary for determining the need for, and developing, fisheries management strategies and regulation regimes; as well as for monitoring management regimes. It also eliminates efforts to evaluate the effectiveness of current management efforts in the Northeast.

The AFS is also concerned by a related reduction in ship support for fisheries programs proposed in the NOAA/NOS, Marine Services budget subactivity. This reduction would deactivate the Albatross IV, Oregon II, John H. Cobb, and Murre II, and would reduce days-at-sea on the Miller Freeman, Townsend Cromwell, David Starr Jordan, and Delaware II. These reductions in fisheries vessel support are not linked to proposed NMFS program reductions. The result of this proposal would be that NMFS would have to cannibalize its resource information programs (i.e., reduce the scope and frequency of resource surveys and related research) by diverting operation funds to provide for vessel charters for ship time now provided by these NOAA fishery vessels.

The proposed reduction in habitat research ($4,833K) would significantly undercut the ability of NMFS to identify, understand, and provide recommendations to appropriate regulatory agencies on the effects of pollution and other habitat alterations on the productivity of the nation's fisheries resources and their safety for human consumption. This reduction is being proposed at a time when our estuaries and near shore waters are increasingly threatened by development and pollution. Healthy estuarine environments are absolutely essential for the maintenance of our most valuable commercial fisheries. Further, this reduction eliminates NMFS ability to conduct evaluations of the effects of pollution in Boston Harbor, New York/Raritan Bay, Delaware Bay, and Chesapeake Bay.

The proposed reduction of $3,858K for stock enhancement and disease research will terminate all NMFS research on the culture of non-salmon species. This includes the elimination of research on shellfish genetics and disease conducted at the Milford laboratory which supports the oyster and clam aquaculture industry. This reduction will also eliminate the turtle head-start program conducted at the Galveston laboratory which is attempting to restore populations of threatened species of sea turtles. It seems ironic that the Administration has methodically attempted to eliminate all support for research on the culture of marine species when the productivity of wild stocks will be unable to supply consumer demand, already resulting in imports supplying over half the shrimp and an increasing share of the salmon consumed in this country, much of which is produced through aquaculture. The short sighted nature of this policy is made worse by the long lead-time needed for genetic, disease, and nutrition research required for bringing marine species under culture.

The reduction in work associated with the Pacific Salmon Treaty ($4,708K) and for Alaska salmon enhancement ($3,766K) makes a mockery of the Administration's commitment to the implementation of this long-sought agreement. Full funding of the programs supporting this agreement is essential to its maintenance, to the resolution of remaining areas of contention, for rebuilding certain Pacific salmon stocks, and to complement habitat restoration activities in the Columbia River Basin.

Proposed reductions in protected species research ($1,200K) and marine mammal research ($1,506K) could also result in significant impact on the nation's fisheries. If we are to resolve the conflict between protecting endangered species and achieving full production from our most valuable fisheries, e.g., south Atlantic/Gulf of Mexico shrimp and redfish, (fisheries already under considerable economic stress) or avoid closure of significant portions of the fishing grounds we must find ways of mitigating or avoiding these interactions. The prototype Turtle Excluder Device (TED), for example, needs more testing and design refinement to be acceptable to industry and to exclude present finfish by-catch without loss of target species. Further, protected species population assessments will be needed for the continued issuance of incidental take permits necessary for the continuation of many of our traditional fisheries.

The desire to have the states and industry do more of the work presently conducted by the federal fisheries programs is one of the rationales used for justifying many of the proposed reductions. However, even where the NMFS has been successful in establishing cooperative programs for meeting federal information needs, such as the Southeast Area Monitoring and Assessment Program (SEAMAP) ($942K), they are being proposed for termination. The SEAMAP is a coordinated state, university, and federal program for the collection, management, and dissemination of fishery-independent survey data in the Gulf of Mexico and south Atlantic which provides stock assessment information not available from the survey work of any partner alone.

The proposed reduction of ($1,600K) for Chesapeake Bay studies will terminate the research conducted in cooperation with the states of Maryland, Virginia, and Pennsylvania on the relationship between natural and man-induced environmental changes and the responses of fish populations in the Bay. While the states assumed greater responsibility for this program and have increased their efforts to identify and solve the Chesapeake Bay fisheries problems, many of the Bay's fishery resources range beyond the Bay and it does not make sense to eliminate participation by the federal fisheries agency.

The proposed reduction in the economics and commercial fisheries statistics program ($2,919K) targets the very type of fisheries catch and economic value data needed for developing and implementing fisheries management programs. Present program efforts in this area are already marginal, particularly as regards recreational landings. Coupled with the proposed termination of the state fisheries grant programs which also support catch data collection, these reductions will just make a bad situation worse.

Overall the proposed reductions in NMFS research programs and the associated closing of NMFS laboratories is devastating to the nation's marine fisheries conservation efforts. Some of these impacts are already being felt. The Oxford lab, a major center of excellence in matters of fish and shellfish disease, has been turned over to the state of Maryland and the federal program presence is being reduced. Negotiations area currently underway for transferring the Galveston lab, which has been the center for research on shrimp and the turtle head-start program, to the Texas A & M marine science program. If accepted these proposed reductions would reduce programs at most of NMFS facilities below critical mass with the likely result that even more facility closures would be required than identified in the proposed budget.

NMFS research facilities and the scientific programs they sustain are nationally unique. They cannot be duplicated at existing state, private, or university facilities. Once these pools of talent are dispersed, restoration of these dedicated teams can be accomplished again only after years of study and work. Study and work are to be done when? by whom? with what funds? Scientific excellence doesn't just happen, it is built through long years of dedicated effort. NMFS staff achievement is constrained in every scientific area by a lack of funds and personnel. There is no staff redundancy and no back-up expertise. Under proposed circumstances, there will be no "next-generation" of trained marine fishery scientists. The proposed reductions in Information Collection and Analysis will be catastrophic, and there is no way for the states or industry to fill the void.

Conservation and Management Operations
(FY 1988 Base $43,186K; FY 1988 Budget Request $28,986K)

NMFS uses the information provided by the programs in the previous budget subactivity as a foundation for its Conservation and Management Operations.

The proposed reductions in program operations for the conservation and management of living marine resources will significantly curtail federal fishery management actions with an increased likelihood of unnecessary socioeconomic loss through unregulated exploitation with an associated risk of irreversible resource damage. Some of the impacts of the proposed reductions follow:

The budget of the Fishery Management Councils would be cut by approximately 50%, calling into question their ability to provide the Congressionally mandated forum for the fishery management process. The great strides being made by the councils in bringing the nation's fisheries resources under management would end abruptly. Additional progress, so near at hand, would not occur and regression would begin.

The habitat conservation and management programs through which NMFS intervenes on behalf of fisheries resources, are already funded at a tragically inadequate level, yet they are slated for further dramatic cuts of over 35%. The tremendous value of this program deserves much greater public support rather than the reduction proposed by the Administration. Of special importance is the fact that NMFS, under the Fish and Wildlife Coordination Act, provides a unique and vital technical service to the COE, EPA, federal Energy Regulatory Commission, and other federal construction and regulatory agencies. Through its Habitat Conservation program, NMFS, in cooperation with the state agencies, provides the regulatory agencies with a forecast of the impact of their actions on fishery habitats and recommends measures to minimize them. Those agencies lack the expertise to conduct such resource impact analyses for themselves. NMFS is the only federal agency with the scientific expertise in living marine resources capable of providing this service. As an example, in the Southeast alone, NMFS recently helped save nearly 17,000 acres of habitat worth about $33 million in annual fisheries production. Project costs to the affected developers were reduced by about 15% through early identification of environmentally acceptable alternatives.

Federal support for the Columbia River Hatchery Program is also being proposed for termination on the assumption that an alternative non-federal funding source will be found. Legislation required to transfer funding responsibility has not been passed and termination of federal support before arrangements for an orderly transition are in place could result in serious/disastrous disruptions to the West Coast salmon stocks with similar disastrous consequences for the local economies in the Northwest. Columbia River hatcheries were built as mitigation for the colossal destruction of spawning and rearing habitat for anadromous fish resources associated with federal hydroelectric and water diversion projects in the Northwest. Until alternative funding for hatchery operations and maintenance is assured, the federal government should never default on its solemn commitment to mitigate in perpetuity those enormous spawning habitat losses.

Once again AFS finds the proposed reductions in these and other Conservation and Management Operations programs to be unjustified, irresponsible, and unacceptable.

State and Industry Programs
(FY 1989 Base $20,684K; FY1989 Budget Request $3,721K)

The funding for the cooperative state and industry fisheries programs in this budget subactivity are slated for an appalling 82% reduction. The impacts of these reductions are as follows:

All grants to the states for interjurisdictional resource research and management and for the research, development, and restoration of anadromous fish (e.g., salmon, shad) will be terminated. This will result in a significant loss of state-provided catch statistics supported by these grants which can not be replaced. The federal role in supporting the collection of catch statistics by the states which provide data needed for federal fisheries management programs is legitimate, necessary, and cost effective. Many coastal resources range or migrate across state boundaries (e.g., salmon, striped bass, shad, menhaden, etc.) and there is little incentive for any one state to support research and management programs which primarily benefit users of the resource in other states. The AFS is especially concerned about the impacts of the proposed termination of the Anadromous Fish Grants and the Striped Bass Study and strongly recommend their retention.

Industry assistance programs are proposed for termination leaving the development of the nation's nontraditional fisheries to the private sector with no direct federal technical program assistance. The high cost and risk involved in fisheries development is unlikely to attract much private risk capital without some federal involvement to provide information and technical assistance.

The proposed budget will virtually eliminate Product Quality and Safety research activities related to (1) the maintenance of fish product safety for human consumption; (2) the development of product labeling and quality standards and; (3) the assistance to industry in assuring continued and improved acceptability of U.S. fishery products in domestic and export markets. The Gloucester, Pascagoula, and Seattle technology labs which have consistently been leaders in seafood quality, safety, and technology research will be closed, leaving only a skeleton staff at the Charleston technology lab to provide analytical support for the seafood inspection activities.

The Saltonstall-Kennedy (S-K) fisheries development grant program is a related budget appropriation category which the Administration proposes to terminate and use the funds as a general offset against budget deficits. This matching fund grant program currently represents only a portion of the 30% of tariffs on fishery imports from which its funding is derived. This program encourages private initiatives for resolving problems in developing commercial and recreational fisheries by helping to reduce the grant recipients financial risks while making their results available to others. The AFS recommends the maintenance of the S-K grant program at the $9 million level.

WHAT SHOULD BE IN THE NMFS BUDGET

1. The NMFS budget should be increased to strengthen resource and user-related information collection activities. This program enhancement is needed to permit informed, high quality decisions affecting resource husbandry, equitable allocation, international negotiations, and sound private sector investment decisions. This should include:

   A. Maintaining resource assessment surveys and NOAA vessel support at current levels, plus enhancing these activities to permit development of a capability for monitoring pre-recruit life stages as a critical component in providing forecasts of resource abundance.

   B. Increases in support for the collection of fisheries statistics (particularly from the recreational sector which represents over 50% of the harvest for some species and may be grossly under-represented in fisheries data), including federal support for state collection of fisheries data needed for federal management programs and support for shared state and federal fisheries data management and exchange systems.

C. Strengthening data analysis capabilities, expanding automation of data management and dissemination systems, and providing support for shared state and federal fisheries data management and exchange systems.

2. The NMFS budget should be increased to provide support for improving fisheries management methodology. NMFS needs to develop its capability for ecosystem/multispecies management which will require understanding stock interactions and the relationship with oceanographic conditions in order to more effectively forecast impacts of, and deal with, fishery management and development actions. This would require:

   A. Funding for developing programs to acquire data necessary for defining the relationships of oceanographic events with resource recruitment and distribution. This would include the development and validation of systems models for providing resource forecasts needed for effective management and industry investment decisions.
   B. Program increases to permit defining interspecies/fish stock relationships and to permit evaluation of alternative management actions and natural events.
   C. Providing increases for conservation engineering to resolve gear selectivity/by-catch and gear conflict problems in managed fisheries and to develop methods for minimizing interaction with protected species.
   D. Maintaining and enhancing federal support for state participation in management of interjurisdictional resources.

3. The NMFS budget should be substantially strengthened in the area of habitat research and conservation program operations as well as strengthening its legislative authority relative to recommendations concerning actions which degrade critical living marine habitat. This would involve:

   A. Increasing funding for research to identify pollution impacts on fish stocks and for defining pollutant pathways into the human food supply. Increasing pressures on coastal waters, fish stocks, and consumer demand/consumption of seafood makes the issue of pollutants probably the biggest "time-bomb" which could threaten the future viability of the domestic fisheries as well as being a potential public health threat.
   B. Increasing funds for regional area planning to provide coordinated and complementary state-federal positions on proposed habitat alterations. This would include identifying alternative development methods to minimize habitat impacts.
   C. Increasing funding to define the relationships of habitat quality and spatial distribution with living marine resource productivity. This would include evaluating the effectiveness of mitigation and habitat enhancement alternatives.

We in the American Fisheries Society continue to be seriously concerned by the Administration's persistent efforts to cripple the federal fisheries program. This Administration has learned nothing from past arguments and has compounded our dismay this year by again seeking to dismantle the NMFS programs. We are concerned and angered by the apparent philosophy of callous disregard for the nation's living marine resources. The NMFS continues to be grossly underfunded for the magnitude and complexity of the job which it has been assigned by Congress. Rather than undermining its fisheries programs, the nation should be making sound and substantial additional investments in fisheries enhancement. The payoff from such investments will influence the nation's future. Consequently, cutting back on fisheries program funding based on a rationale of reducing the deficit will inevitably have the opposite effect. The trade deficit in fisheries products alone (not considering the economic value of the domestic industry or the costs of social conflicts involved with resource allocation and protected species issues) would seem to warrant a major federal investment in fisheries programs. In fact, the AFS believes it is time for the Congress to recombine NMFS with the Department of the Interior's Fish and Wildlife Service to provide a critical mass for the nation's federal fishery programs in a new single fisheries agency.

Congress has steadfastly restored the proposed cuts in the NMFS budget in past years. We in the American Fisheries Society have great faith that Congress will once again have the wisdom to restore and enhance the NMFS budget.

Thank you for the opportunity to present our views.

Sincerely,

Carl Sullivan

Carl R. Sullivan
Executive Director

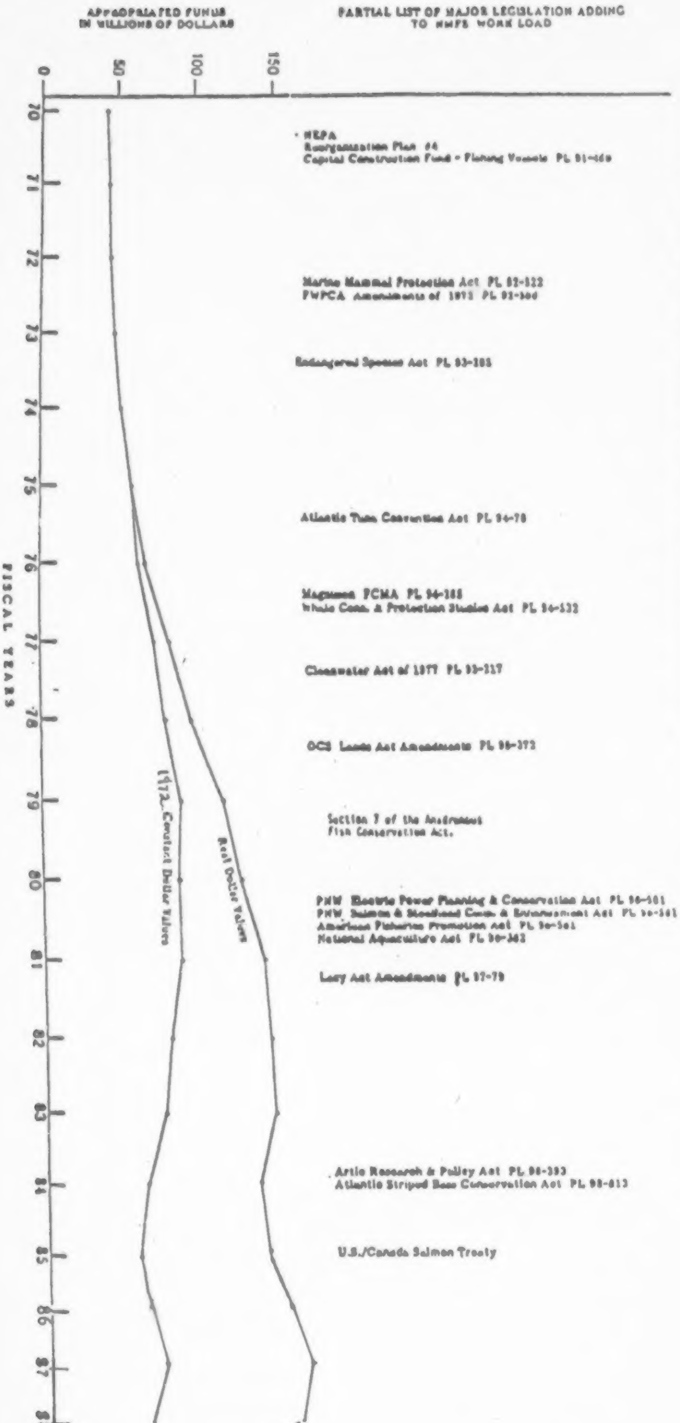


FIGURE 1. — NMFS O.R. & F. Budget - correlated with addition of new responsibilities.

FEDERAL/STATE COOPERATIVE PROGRAM IN WEATHER MODIFICATION

[CLERK'S NOTE: The subcommittee received a letter from Senators Kent Conrad, Quentin Burdick, Harry Reid, Chic Hecht, Alan Dixon, Paul Simon, Jake Garn, Orrin Hatch, Larry Pressler and Thomas Daschle with regard to Federal/State Cooperative Program in Weather Modification Research. At the direction of the chairman, the letter has been printed in the record at this point.

[The letter follows:]

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

March 24, 1988

The Honorable Ernest F. Hollings, Chairman
Appropriations Subcommittee on Commerce, Justice,
State, the Judiciary and Related Agencies
S-146A US Capitol
Washington, DC 20510

Dear Mr. Chairman:

We ask you to join us in requesting continued funding for the Federal/State Cooperative Program in Weather Modification Research in the Fiscal Year 1989 budget of the National Oceanic and Atmospheric Administration (NOAA).

The total program request is $2,350,000. This amount includes $550,000 each for North Dakota, Illinois, Nevada and Utah, and $150,000 in research aircraft support for all the projects.

This program is making significant progress toward resolving important scientific questions about weather modification. Further resolution will provide major benefits to agricultural production in the arid West, the Great Plains, and the Midwest and will further benefit the nation's water resources and energy production.

The attached document provides further details, including descriptions of the four state programs, past budget history, and the Fiscal 1989 request.

We urge your support.

Sincerely,

Kent Conrad
Kent Conrad

Quentin Burdick
Quentin N. Burdick

Harry M Reid
Harry Reid

Chic Hecht
Chic Hecht

Alan J Dixon
Alan J. Dixon

Paul Simon
Paul Simon

Jake Garn
Jake Garn

Orrin Hatch
Orrin G. Hatch

Larry Pressler
Larry Pressler

Tom Daschle
Thomas A. Daschle

Senator HOLLINGS. Very good. We have got some other questions on cost and what-have-you. We will submit those for the record. We have questions from Senators Byrd, Chiles, Bumpers, Hatfield and Specter. We thank you and your colleagues very much.

Dr. EVANS. Thank you very much.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

DEFENSE RESTRICTIONS ON CHARTS

Question. NOAA has been involved in mapping and charting the ocean bottom for a number of years. The Department of Defense has raised concerns about the release of some of the charts which show very detailed information about the ocean terrain. We understand that DOD restricted the release of the charts because they thought that the U.S.S.R. could use the charts to help their submarines approach the U.S. coast.

A) What is the status of the DOD restrictions?

Answer. A) In 1984, Navy expressed concerns that release of high resolution surveys conducted by NOAA could damage national security and certain NOAA data were restricted. For a time, Agency discussions ensured under the purview of the National Security Council's National Operations Security Advisory Committee and eventually presentations were made to a special panel of the National Academy of Sciences (NAS). The panel concluded that release of the data should be controlled but periodic review should be conducted because the technology is not especially sophisticated and is expected to proliferate. In early 1986, NOAA proposed that site-specific releases be authorized, among other proposals. NOAA was then authorized to release data to any federal agency with a need-to-know, and to publish updated data on NOAA nautical charts. A part of the late 1986 DOD response indicated that a strategic assessment would have to be conducted in order to determine if site specific data at full resolution can be released. Throughout 1987 and the early part of 1988, DOD has conducted this assessment. The report, which is classified, was to have been completed and delievered to Rear Admiral Seesholtz March 14, 1988. NOAA has written to the National Security Council requesting access to this study.

Question. What is the purpose of the charts and how is it being affected by the restriction?

Answer. The purpose of the NOAA Exclusive Economic Zone effort is (1) to provide high resolution bathymetric data for use in research and assessments of mineral resources, (2) to continue the civil mapping effort applying the most accurate and efficient methods, (3) to improve NOAA's nautical chart series (not only improve upon the resolution of existing data, but also develop digital data sets to support emerging digital mapping system being developed by the private sector), (4) to provide improved bathymetric map data to our Nation's deep-dragger fishermen and academic researchers, (5) to delimit our Nation's marine boundaries, (6) to support national defense, and (7) to support the rational implementation of future efforts such as marine mining, and waste disposal.

The classification restriction primarily impacts the non-Federal researchers, private sector firms involved in offshore minerals and fisheries activities. The immediate needs of getting the data to the U.S. Geological Survey for geologic assessments in conjunction with their GLORIA image data and upgrading of NOAA's data base and nautical charts are being met.

Question. What efforts are being taken to alter the restriction or change the charts?

Answer. At present, all NOAA high resolution map data are provided to the U.S. Geological Survey for their use in mineral assessment and research into geologic processes. All high resolution data have also been provided to NOAA researchers. Selected data sets have been provided to other federal agencies. Within NOAA's Office of Charting and Geodetic Services, the Exclusive Economic Zone (EEZ) data are used to upgrade the publicly available nautical charts. As a result of the recently completed study, NOAA is hopeful that a mechanism will be established to provide for timely release of EEZ data sets at full resolution.

Question. The Estuarine and Coastal Assessment request shows a decrease of $6.7 million from the FY 89 base of $14.5 million to $7.7 million. Most of the decrease, $5.5 million, is in the ocean assessment program. The justification is not very precise on what activities will not be undertaken.

A. Explain what objectives will be met with the $7.7 million.

Answer. A) Estuarine and Coastal Assessment Program activities that will be continued with the remaining $7.7 million include: (1) the analysis of sediment and biological samples from selected sites of the National Status and Trends Program; (2) the synthesis of information on coastal and EEZ regions under the Strategic Assessment Program; and (3) activities related to hazardous spill response.

Question. What, more specifically, will not be accomplished with the decreased funding in the following areas; (1) National Status and Trends (NS&T) Program, (2) applied research and assessment on the consequences of contaminants on coastal and estuarine environmental quality, and (3) generic ocean disposal assessment and research activities.

Answer. The proposed decreases in the Estuarine and Coastal Assessment Line Item will:

A) Eliminate field sample collection activities of NOAA's National Status and Trends Program, including the Mussel Watch Project and the Benthic Surveillance Project. The Mussel Watch Project monitors chemical contaminats in mussels, oysters and sediments collected yearly at 150 sites nationwide and the Benthic Surveillance Project monitors the chemical contamination in bottomfish and sediments at 50 locations nationwide.

B) Eliminate applied research and assessments on the consequences of contaminants on coastal and estuarine environmental quality; and

C) Eliminate generic ocean disposal assessment and research activities.

COASTAL ZONE MANAGEMENT

Question. The Coastal Zone Management Act of 1972 as amended, provides for the rational use of the Nation's coastal zone. NOAA approved state plans for the management of programs to accomplish the acts goals. NOAA has been monitoring and evaluating state programs for a number of years. In addition, Congress, through NOAA, has provided Program Administration Grants to states to fund some of the programs effort. NOAA is requesting a decrease of $35.7 million from the FY 89 base which would terminate the grant portion of the program.

A) Congress has mandated that the States make improvements in their programs. In monitoring the states, how has NOAA found the improvement effort?

Answer. A) Section 306 (a) (3) of the CZMA requires states and territories to expend an increasing proportion of each award on activities that will result in significant improvements in furthering the national coastal management objectives specificed in Section 302(2). A certain percentage of a state's or territory's grant award is expended for significant improvement projects. The determination of satisfactory completion of projects is based upon whether specified improvements have been made is based on an evaluation of actual results from the operation of a state's or territory's program during the award period. If a state or territory fails to submit satisfactory documentation that benchmarks have been met, Federal funds equal to funds devoted to those tasks may be deobligated from the next grant award.

All states are complying with Section 306(a) (3) of the CZMA which requires that an ever increasing proportion of Federal funds be used for significant improvements.

Question What impact would the reduction of the grants funding have on the states efforts to run the programs? Have any studies been undertaken to support this view?

Answer. The CZM program was established in 1972 to assist States in developing the capability to manage their coastal resources. The program was not intended to provide continuing support to the State programs. This program has successfully achieved its goal by developing an infrastructure to manage these resources. While we are not aware of any studies on this issue, states and territories are in a better position to provide operating funds for this program, as the enabling legislation originally intended.

COASTAL MANAGEMENT

Question. Once again, the Administration proposes a reduction in pollution assessment and monitoring programs (this year about $5.8 million). Included in this cut is part of the National Status and Trends Program. In light of the recent Office of Technology Assessment (OTA) report, Waste in the Marine Environment, which calls for increased coastal monitoring, how do you justify this reduction?

Answer. The National Status and Trends (NS&T) Program will continue in FY 1989, with activity directed to analysis of sediment and biological samples from selected sites. The reduction would reduce field sampling.

The justification for the reduction is simply that a judgement had to be made among competing programs and requirements, and other uses of funds were given higher priority.

Question. The OTA report (Waste in the Marine Environment) concluded that a systematic framework is missing for deciding which coastal waters require additional management efforts.

A) What agency should take the lead role in such an identification process?

B) What is NOAA doing to identify estuaries and coastal waters that need additional management to reverse or prevent degradation?

C) Is this tied into your coastal zone management efforts?

Answer. A) NOAA is taking an important role in identification of coastal areas which require additional attention. Because adequate coordination measures increases exist between Federal agencies involved in coastal waters, NOAA does not consider it necessary to designate a lead agency.

B) Various NOAA programs contribute to this effort, including environmental assessments of the health of coastal and estuarine areas, and research activities managed through the National Estuarine Reserve Research System (NERRS).

C) Yes it is, particularly through the NERRS, which is authorized by 1986 amendments to the Coastal Zone Management Act, and managed through the Office of Ocean and Coastal Resource Management.

NOAA SHIPS

Question. NOAA has 23 major vessels ranging from 86 to 303 feet that are used for charting, mapping, research, and resource and marine environmental assessments. The fleet is staffed by the NOAA Corp Commissioned Officers and others. Eleven ships are serviced out of the Atlantic Marine Center in Norfolk and 12 are serviced out of the

Pacific Marine Center in Seattle. NOAA is requesting the deactivation of 6 ships and reduction of days-at-sea for 7 ships. In addition, they are requesting the closure of the Southeast Marine Support Facility in Miami. NOAA is also undertaking a study to compare chartering with the use of NOAA ships which is due in April.

What would be the effect on the NOAA Corps if the deactivation and reduction of days-at-sea were approved?

Answer. The fleet and days-at-sea reduction will not reduce the number of NOAA Corps officers. If the ships are deactivated, the NOAA Corps officers would be shifted to other programs.

Question. How did NOAA determine the ships to deactivate?

Answer. The identification of which ships to deactivate and which operations to reduce was based on an assessment of NOAA program priorities.

Question. What chartering will be required if the fleet reductions are approved?

Answer. The proposed fleet reduction do not require any chartering. If the results of the Marine Board study on vessel chartering demonstrate that chartering is more cost effective, then costs and ship allocations in the FY 1989 budget can be modified accordingly.

Question. What activities are currently being performed at the Southeast Marine Support Facility? If the fleet is not reduced, does the closure fully make sense?

Answer. The Southeast Marine Support Facility in Miami is the home port for the NOAA ship MALCOLM BALDRIGE (formerly RESEARCHER) and, at times, provides port services to ships working the Southeast Fisheries Center. The facility provides logistics and warehouse support for the MALCOLM BALDRIGE. The facility also houses some warehouse space for the Atlantic Oceanographic and Meteorological Laboratory (AOML), the National Marine Fisheries, and the National Weather Service.

The MALCOLM BALDRIGE home port could be changed to NOAA's Atlantic Marine Center in Norfolk, Virginia, and the ship could continue to import at Miami to stage projects supporting AOML. The NWS meteorologists and warehoused items could be relocated to other facilities. These changes could be made even if the fleet is not reduced.

Question. What are the initial findings of the chartering study?

Answer. The Marine Board of the National Academy of Sciences, National Research Council, was requested to develop a methodology for comparing in-house operation of NOAA vessels versus chartering of vessels to conduct NOAA programs. The final report is not scheduled for completion until April. As the studies are not final, it would not be proper to introduce them into the decision making process at this time.

Question. What thought is being given to building new ships rather than chartering?

Answer. NOAA has excess fleet capacity at present. We have no plans to build new ships in the near future as they would only increase the excess capacity.

NATIONAL MARINE FISHERIES

Question. Resource Information activities are designed to collect biological and environmental data about the Nation's renewable living marine resources and their supporting environment. NOAA is requesting a decrease of $34.3 million from the FY 89 base to $40.1 million. In addition, it is requesting a reduction of 128 positions (from 806 to 678). The reductions in funding and staff appear to be spread through the program and country. The request calls for closing labs in Bay St. Louis, Mississippi; Oxford, Maryland; and Galveston, Texas.

What effect will these proposed decreases and closures have on other NOAA fisheries laboratories?

Answer. The proposed $34.3 million reduction in lower priority resource information activities (from the FY 1989 Resource Information line item base of $74.4 million) will permit the continuation of a $40.1 million program which will address the highest priority Federal fisheries, protected species and habitat protection information needs. The proposed program reductions and facility closures will result from the creation of centers of excellence in fisheries science as the high priority elements from the closed facilities and other reduced programs are consolidated in the remaining NOAA fisheries laboratories. The State of Maryland has already assumed responsibility for operation of the Oxford laboratory, providing a facility for state Chesapeake Bay research programs while continuing to accommodate the ongoing high priority Federal programs at that facility. Negotiations are currently underway with Texas A&M University concerning the Galveston facility. The remaining high priority program elements at other laboratories proposed for closure, e.g., Bay St. Louis, Mississippi, Tiburon, California, and the Gloucester, Massachusetts, and Seattle, Washington, technology labs will be consolidated at other NOAA fisheries research facilities.

Question. What effect will the closures and reductions have on state programs?

Answer. The proposed program reductions and terminations will reduce the amount of Federal funds available to the states for support of activities which are considered to be either lower priority or to be more appropriately the responsibility of the states. These reductions will require the states to evaluate the importance of these program activities for meeting state responsibilities and make decisions relative to continuing the activities with state funds based on their relative importance to other state programs.

Question. What effect will the closures and reductions have on NOAA's ability to accept other new responsibilities?

Answer. NOAA will continue to assess the priority of any new responsibilities relative to those problem/issues being addressed by existing base programs and allocate program efforts to areas which are clearly Federal responsibility and which are of highest priority.

Question. How were the program and staffing reductions determined? What were considered the priority items?

Answer. The programs proposed for reduction have been identified as providing lower priority information relative to the needs for meeting Federal responsibilities, and/or are activities which were considered to be more appropriately the responsibility of the states or industry. The staffing reductions were based on program reduction decisions and reflect the staff positions associated with (funded by) these lower priority program activities. High priority program activities were identified as those activities which were clearly Federal responsibility and which provided the essential information needed for the effective functioning of these Federal programs.

PRIBILOF ISLANDS

Question. Last month the staff of the Subcommittee met with representatives of St. Paul's Island, which is part of the Pribilof Islands. In 1983, $20,000,000 was appropriated to assist the natives of the Pribilofs convert to an economy not dependent on taking seals. It was originally contemplated that this transition would take 5 years but we were advised the economic development improvements on St. Paul's will not be completed until May 1989. The trustee for St. Paul's Island indicated that the original appropriation had been committed and that funds were required to guarantee the delivery of fuel this summer as well as to provide basic subsistence until the new economy kicks in. A total of 5,400,000 was sought but I understand that St. Paul's has arranged for the fuel.

I would appreciate your bringing the Subcommittee up-to-date on the situation on St. Pauls and also providing the Administration's view of any further action required.

Answer. NOAA understands that the City of St. Paul, Pribilof Islands, Alaska, requires additional assistance in funding basic human needs for the community during FY 89 and FY 90 until their new harbor complex is completed and in full operation ($5.4 million). Community fuel supplies ($1.5 million), for example, must be paid for this summer to guarantee winter delivery to this isolated island. The State of Alaska will provide a $1.5 million loan for fuel oil if the City can find a guarantor for that sum. We have contacted the Economic Development Administration (EDA) and the Bureau of Indian

Affairs (BIA) and have not been able to locate a guarantor. In addition, the City needs $1.7 million for FY 89 and FY 90 to provide basic human needs for the community. Finally, $.5 million is needed for FY 90 for a business development program to fully promote the utilization of the harbor.

FY 88	$1.5 M	Loan guarantee fuel purchase
FY 89	$1.7 M	Basic needs (same purpose as Trust Funds)
FY 90	$1.7 M	Basic needs (summer 1990 harbor completion)
	$0.5 M	Business development program
	$5.4 M	

FY 88	FY 89	FY 90
$1.5 M guarantee authority	$1.7 M	$2.2M

Since amendments to the Fur Seal Act were passed in 1983, NOAA has made a significant effort to help the Pribilof Islands to develop an economy independent of commercial sealing. These efforts have included the creation and administration of two trust funds from the $20 million Congressional appropriation: an $8 million trust fund for St. George Island and a $12 million trust fund for St. Paul. The Department has also helped provide economic development assistance for boat harbor construction through grants from the Economic Development Adminstration of the Department of Commerce; and NOAA directly provided funds to upgrade existing facilities on the islands.

Although harbor construction on St. Paul Islands was originally expected to take only three years and then begin to provide jobs and income for island residents, unforeseen circumstances have made this initial schedule impossible to meet. A major storm destroyed most of the St. Paul breakwater during the first phase of its construction. Most recently, the drop in oil prices has affected the State of Alaska's schedule for harbor support funding. Because any viable future for the Aleut residents of St. Paul Island depends on this harbor-based economy, financial assistance to provide basic services to Island residents during this interim period is a reasonable and prudent investment. The Department is not able to provide this assistance since it would require reductions in basic NOAA programs. NOAA will work with St. Paul's to identify other sources of support.

PROFS

Question: For the past 5 years, NOAA has been testing various concepts of data handling and interaction with its Program for Regional Observing and Forecasting Services (PROFS). PROFS has demonstrated the capability of directly accessing and displaying real-time satellite data in an integrated format with other ground-based data sources such as radar and wind profiler data to generate short-term forecasts. NOAA intended that the knowledge gained from PROFS would serve as the basis for operational implementation of such systems on a NOAA-wide basis through AWIPS-90.

To date how much money has been spent on the PROFS program?

Answer. Since FY 1980, approximately $34.3M has been appropriated for PROFS. In addition, NWS will have funded about $9.9M for special PROFS projects over the FY 1982-1988 timeframe. NOAA has obligated a total of $29.2 million of the appropriated amount through March 31, 1988 for PROFS.

Question: What have you learned from the PROFS experiment? By integration of satellite data with other data sources how much has the accuracy of short-term forecasting improved?

Answer. Through the PROFS program, NOAA has created a "test bed" which permits systematic test and evaluation of candidate technologies, system configurations, data sources, and techniques for improving weather warnings and short-term forecasting services.

Selected technologies and methods also have been introduced into the Weather Service Forecast Office in Denver for evaluation in an operational environment. This program has demonstrated effective methods of processing, organizing, integrating, accessing, displaying, overlaying, animating, and interpreting frequent, high-resolution observational and guidance information. Data sources include meteorological satellite data, modern weather radar data (using the experimental Doppler weather radar system of the National Center for Atmospheric Research), a mesoscale network of vertical wind profilers developed by NOAA's Environmental Research Laboratories, and enhanced versions of meteorological analyses and forecasts produced by the National Meteorological Center.

Using the new tools, PROFS has examined the feasibility of making qualitative improvements in the specificity, frequency, and timeliness of warnings and short-term forecasts. It is widely recognized that one of the most serious shortcomings of current services is "false alarms" and that these often result from designating a warning area and time interval that are very large compared to the size and duration of the threatening phenomenon (e.g., tornado or severe thunderstorm). Thus, one objective is to reduce the size of the area warned and the duration of the warning. This places great demands on the amount of detailed information that must be examined and compresses the time available; it also increases the amount of information to be prepared for users. PROFS has successfully demonstrated the feasibility of accomplishing these tasks.

Another important objective is to establish practical methods of anticipating the location and timing of the onset of severe phenomena before they can be observed through associated clouds and precipitation. PROFS has demonstrated several effective methods using detailed analysis of high resolution data (e.g., surface mesonet and Profilers) and recognition of patterns and precursors in radar and satellite images (e.g., colliding gust fronts in clear air).

Question: If AWIPS-90 is not implemented, does the NWS plan to carry out the PROFS concept on an operational basis? That is, without AWIPS-90 is PROFS dead? (page NOAA-106)

Answer. PROFS would continue, although at a reduced level as reflected in the 1989 President's budget. The PROFS concept, a flexible test bed where creative research and developmental scientists can systematically test and evaluate promising warning and forecast techniques using modern technology, has proved extremely valuable not only to NOAA and the NWS but to other agencies as well. This capability will be at least as valuable for the foreseeable future. There is no doubt that technologies and techniques already examined in PROFS will be incorporated into NWS operations (some already are being integrated into NEXRAD); and, as the science of mesoscale meteorology continues to develop rapidly, many new techniques will be perfected in PROFS and transferred to operational use. In addition, PROFS experience in data base management will be extremely valuable to new Global Geosciences, the National STORM Program, and planned NWS systems.

Question: Are there optional approaches whereby the existing Automation of Field Operations and Service (AFOS) system can be modified to use the PROFS concept? If so, please describe the alternative approaches and potential costs.

Answer. It may be helpful to place the several frequently mentioned programs and systems into a more unified conceptual framework to facilitate appreciation of their current and potential relationships. At some stage, an information processing, and communication system (e.g., AFOS) is a comparatively concrete "thing," a collection of computers, disk drives, keyboards, display screens, multiplexers, modems, communication links, test equipment, spare parts, power conditioners and related physical devices, along with complementary software (computer programs), communications protocols, procedures, configuration control mechanisms, documentation, training, operators, monitors and maintainers. Overarching all the various elements is an integrating systems concept and architecture that make the collection of elements a "system".

The most fundamental capabilities and limitations of a system are determined by its overall concept and architecture. In general, the architecture will set the bounds on what functions can or can't be done, what performance levels can be achieved, how many and what kinds of elements can be incorporated, how easy and costly will be maintenance, modifications and upgrades, how rapidly the system will be obsolete, etc. Just as the capabilities of individual elements (e.g., computers) have evolved with time and creativity, so have system architectures. In fact, new levels of technology in hardware, software, and communications technology have made possible powerful new architectures that were only conceivable a decade ago.

As the "Information Age" has been taking shape, essential disciplines of defining, developing, and managing complex systems have been evolving. The "systems engineering" disciplines are replete with jargon and esoterica, but they embody the accumulated experience of many individuals and institutions on what works and what doesn't. One of the key lessons is the need for a comprehensive, systematic methodology that considers the requirements and costs over the entire planned lifetime of the system architecture. Another is that the major source of failure, dissatisfaction and excess cost in the development of complex systems is inadequate definition and understanding of the requirements the system must satisfy. As systems engineering disciplines have developed, the accumulated experiences of federal agencies also have been embodied in system acquisition procedures and regulations designed to ensure that the government and the taxpayers get what they need in an orderly and cost-effective way.

The National Weather Service has attempted to learn and adopt the basic principles of system engineering discipline and federal system acquisition policy and procedures in devising a strategy for acquiring a modern information processing, and communication system for the 1990's. In addition, the direct experience of NWS in implementing and operating AFOS has been a rich source of lessons, both good and bad. In addition to general principles that apply to nearly any system acquisition, NWS also carefully identified unique considerations such as the need to provide essential weather services without interruption or serious degradation throughout the process, to be compatible with and support planned foreseeable changes in organizational and staffing structure, and to support essential test and demonstration of all important changes associated with NWS modernization.

The resulting acquisition strategy is very general and should not be confused with a particular system such as AFOS. Of course, the strategy is designed to result eventually in a particular system, and that eventual system was given the name AWIPS by the National Weather Service. It is important not to think of AWIPS as defining, right now, a specific, known collection of hardware, software and communications arrangements that can be found in a store or catalog. Unfortunately, the name AWIPS, the future system and the acquisition strategy have become intertwined and difficult for people to separate.

The general strategy begins with the National Weather Service defining, in functional terms, the requirements for the information processing, and communication system needed to support planned NWS operations in the 1990's. These requirements serve as the basis of competitive studies by qualified private sector firms to define cost-effective alternatives through analysis of cost and performance trade-offs. Following selection of the best alternative, prototypes would be developed, tested and evaluated. Another decision to proceed with production would be required after successful validation of the prototypes. This general process is in accord with current policies for procurement of major systems.

The PROFS program plays a vital role in the NWS strategy by permitting realistic stimulation of the projected operations concepts for the 1990's and validation of the functional requirements. This process greatly reduces the risks by ensuring that requirements are realistic and necessary and that feasible and cost-effective technical solutions exist. Documentation and even data tapes that describe the PROFS experience have been made available to all private sector firms who wish to consider competing to define and develop a system to meet NWS requirements.

NWS plans to identify the most cost-effective alternative to replacing AFOS, the current information processing and communications system.

Question: How important is implementation of the NEXRAD system to successful implementation of the PROFS concept?

Answer. Substantial increases in data volume will be produced by new meteorological sensors currently under development by the National Weather Service (NWS). The core concept of the Program for Regional Observing and Forecasting Services (PROFS) is to provide a system which can accept the new and increased volume of data, integrate the data from the different sensors, assist the meteorologist in analyzing and processing that data, and provide and control the dissemination of appropriate results of that analysis and processing to all users needing the information. PROFS serves as a vehicle for development and refinement of both technical and operational requirements leading to deployment of an operational system in the NWS which will meet NWS's information processing and communications needs.

NEXRAD is the largest single source of data among the new sensors with major additional data input provided from satellite, surface observation and central guidance sources. Because radar data is a large component of the total data input to PROFS and any successor operational derivative, it is an important factor in the functional design and physical realization of that system.

During the PROFS development phase, high resolution Doppler radar data has been provided by the experimental CP-2 radar near Denver, Colorado, which has many characteristics similar to those of the planned NEXRAD system.

National deployment of the NEXRAD system is, therefore, one of four or five key steps leading to an integrated modernization of the NWS in the 1990s.

CLIMATE AND GLOBAL CHANGE

Question. NOAA has included $15 million for a new activity called Climate and Global Change. The objective of NOAA's effort is to establish the foundation for a national information service based on providing reliable predictions of global climate change and associated regional implications on time scales ranging from seasons to a century or more. A number of other Federal agencies (NASA, NSF and USGS) have requested funds in this or a related area called Earth Systems Science. The Office of Science and Technology Policy is to prepare a coordinated plan for the various agencies.

Why is a new activity need in this area? Can't the existing NOAA structure undertake this activity?

Answer. It has become increasingly clear that man is no longer a passive participant in the global environment. Human activity has reached the point where it is impacting the global environment in ways that we do not fully understand. The effects of this activity, coupled with the natural variability in the global system, will have profound implications for the future. Current and anticipated changes in the global environment will produce significant economic, social, and political problems which this nation must be prepared to address:

- The single 1982/1983 "El Nino" event caused tens of billions of dollars in economic losses in the U.S. and world-wide, and El Nino is well known to be a recurring phenomenon.
- The potential effects of long-term global climate changes (e.g., "greenhouse" warming, desertification) similarly have major implications for industry, agriculture, and fisheries. For example, droughts in the African Sahel and the American Midwest have had major economic impacts in modern times; historically, these episodes are known to recur periodically.
- Environmental quality issues like acid rain and stratospheric ozone depletion are already receiving national and international attention, which is leading to pressures for unprecedented worldwide regulatory measures.

An effective national program for Climate and Global Change requires a stable, long-term commitment from Federal agencies. NOAA, because of its forecasting mission and operational elements, is uniquely positioned to provide leadership.

NOAA will focus on the most relevant societal aspect of earth sciences -- the global climate system -- because a changing climate confronts us with significant economic, health and safety, and national security implications. Ongoing NOAA programs in oceanic and atmospheric observations, monitoring, data processing, research (including TOGA), predictive modeling, and information management represent a substantial Federal capability and are the foundation for NOAA's role in a U.S. global change program.

This capability serves as the foundation on which to build NOAA's contribution to a national global change program. However, resources do not exist to observe adequately the oceans and atmosphere, to analyze and manage the data, to develop forecast models, and to pursue focused research on the scale needed for climate prediction. With a relatively small additional investment through the proposed integrated program in Climate and Global Change, NOAA can bring the resources of a billion-dollar agency to bear on this critical, national problem. The nature of the problems to be addressed will require an extremely well coordinated program spanning the activities of the existing NOAA organizational structure. The proposed program includes the new management and review mechanisms deemed necessary to achieve the stated goals.

Question. What are NOAA's strengths relative to the other agencies?

Answer. A number of Federal agencies, with strong support from the academic community, have begun to put together a cohesive program to understand the global system and develop the capability to predict changes. This effort will require a well coordinated interagency program in which participating agencies provide unique but interrelated contributions. While a number of agencies are contributing, the principal U.S. participants are NSF, NOAA and NASA:

- NSF is charged with maintaining support for basic research in all of the earth science disciplines. In addition, NSF is an active sponsor and coordinator for many national and international multi-disciplinary global research programs. The NSF Global Geosciences Program supports a number of university-based research efforts in the atmospheric, oceanic, biological, and geological sciences aimed at better understanding the basic dynamics of global systems. Through this program, NSF is planning and currently implementing coordinated interagency field campaigns, such as the World Ocean Circulation Experiment (WOCE) and the Tropical Oceans and Global Atmosphere (TOGA) Program, each of which provides the ground-based component to the U.S. earth-observing satellite missions planned for the 1990's.

- NASA's primary responsibility is for earth sciences research missions from space, mission planning, satellite instrument development, and a supporting program of basic research. NASA's science advisory committee has focused attention on the concept of Earth System Science (the study of earth as a single, integrated system) and produced a series of publications that have greatly increased public awareness of the problems and scientific opportunities at hand. NASA will continue to support interdisciplinary research programs. NASA will additionally coordinate proposed international satellite observational programs and complete approved satellite missions including the Upper Atmospheric Research Satellite, the Ocean Topography Experiment (TOPEX/POSEIDON), and the Global Geospace Science Program. Further, NASA hopes to make use of the polar platforms being developed as part of the international space station effort for earth science observations.

- NOAA is the principal operational, observational, prediction, and information management agency for the national global change effort. NOAA's unique role derives from its statutory responsibility to predict climate change and to provide related data, information, and services to the public, private sector, research community, and other Federal agencies. NOAA has a critical contribution and has developed the requisite plans for elements of the global change program that incorporate long-term observations, development and use of predictive models, supporting research, and information management.

The President's FY 1989 budget assumes that funding for NOAA's Climate and Global Change Program will rise to $20M in FY 1990.

Question. What efforts are expected to be funded with the $15 million requested for FY 89.

Answer. The broad goal of NOAA's program in Climate and Global Change will be: to establish the foundation for a national information service based on providing reliable predictions of global climate change and associated regional implications on time scales ranging from seasons to a century or more.

- Predicting the behavior of the ocean-atmosphere system is what makes NOAA's program and responsibilities unique and vital to a successful national effort to deal with a changing global environment. Every element of NOAA's Climate and Global Change Program will be driven by and evaluated in terms of its contribution to developing this capability. To achieve this capability and build on existing programs, NOAA is committed to a program with three primary elements:

  - Climate diagnostics and prediction, including the development and application of predictive models, and specific, climate-related data bases;

  - Global observations, analyses, and information management; and

  - Focused research on specific aspects of the climate problem needed to achieve the prediction and assessment capabilities that are the goals of the program (e.g., TOGA).

Specific activities funded by the FY 1989 proposal include:

- GLOBAL ANALYSES AND DATA BASE DEVELOPMENT ($3M)

  - Implementation of reanalysis as source of long-term data sets
  - Improved existing data bases
  - Establishment of new baseline data sets
  - Special global analysis products
  - Interdisciplinary historical data studies

- GLOBAL SEA LEVEL PROGRAM ($3M)

- LARGE-SCALE OCEAN OBSERVATIONS ($4M)

  - In situ upper ocean observations
  - Quality control, data ingest, and derived products

- STRATOSPHERIC OZONE MONITORING ($1M)
  - Joint program with NASA
- LONG-TERM DATA MANAGEMENT ($1M)
  - Interagency planning for global change
  - Evaluation/inventory of environmetal data
  - Improved data base access
- FOCUSED RESEARCH ($3M)
  - Interannual climate variability--TOGA

Question. What portion of this amount will be used to upgrade existing NOAA facilities and archives?

Answer. Funds provided for the new program will be used to support activities relevant to predicting climate on time scales of seasons to decades or longer. This will undoubtedly lead to improvements in NOAA's base capabilities applied to this program, but Climate and Global Change resources will not be used as a financial solution to existing infrastructure problems.

Question. With $17 million identified for the outyears, what types of efforts are envisioned for NOAA?

Answer. In the President's Budget for FY 1989, a total of $20 million is identified for FY 1990. The $20 million figure includes a $3 million enhancement to the existing $2.5 million base funding for the TOGA program. The amount is also scheduled in the FY 89 recommendation. The proposed distribution of these funds, in the categories described above, is as follows:

- Global Analyses and Data Base Development ($6M)
- Global Sea Level Program ($3M)
- Large-Scale Ocean Observations ($4M)
- Stratospheric Ozone Monitoring ($2M)
- Long-Term Data Management ($2M)
- Focused Research (TOGA Enhancement) ($3M)

Question. How will the efforts be controlled to ensure that they are complementary and that unnecessary duplication does not grow into the programs? Is there a need for a focal point agency or authority in this area? If so, who should it be and why?

Answer. Within NOAA, the management mechanism selected for Climate and Global Change (C&GC) will ensure effective NOAA-wide program integration without requiring major organizational changes. Responsibility for policy guidance and program planning will reside in a corporate (i.e. NOAA-wide) management structure.

The management structure for Climate and Global Change is built upon the successful approach currently used for the TOGA program and the international experiments of the Global Atmospheric Research Program before it. The structure involves three complementary elements:

- A Global Programs Office (located in the Office of Oceanic and Atmospheric Research) will manage the program by coordinating program elements among NOAA line organizations, developing and tracking the Program's annual spending plans, ensuring active participation of a scientific advisory panel and managing a competitive research program which ensures the contribution of the external scientific community to climate and global change.

- The Director of the Office will serve as Chairman of the C&GC Board of Directors, comprised of key representatives of NOAA line organizations. The Board is responsible for program integration, guidance, and problem-solving. Board members are selected for their expertise and involvement in climate-related activities and their responsibility (within their own line organizations) for the implementation of major elements of the program. If the Director and the Board are unable to resolve a major issue or problem, appeals will be taken directly to the Administrator.

- An external Scientific Advisory Panel will provide broad program direction in the context of national and international activities. This advisory group is to be active in establishing plans, reviewing progress, and setting priorities on a continuing basis.

The key to managing an integrated NOAA program is to ensure that these three elements operate effectively in the long-term, broad-based NOAA planning and major programmatic decision-making process.

At the national and international levels, details of coordinating a U.S. Global Change program should be derived jointly by all participating agencies. The principal forum for this is the Committee on Earth Sciences (CES) of the Federal Coordinating Council for Science, Engineering, and Technology (FCCSET). The CES will coordinate U.S. activities in global change by formulating plans and reporting on progress toward achieving U.S. priorities. Specifically in NOAA's area of interest, global climate change, the CES could draw upon the existing, legislatively mandated National Climate Program (NCP) and its interagency coordination arm, the NCP Policy Board.

In response to OMB and the Office of Science and Technology Policy, the CES has begun efforts to prepare a coordinated plan for an effective U.S. program in Global Change which:

- Identifies the nature of the problem and anticipated program benefits/accomplishments,

- Establishes a clear goal and specific objectives for a Federal program in global change,

- Specifies appropriate agency roles and responsibilities, and
- Provides guidance on appropriate management mechanisms for both the domestic program and coordination with the international program (IGBP).

The new committee within the National Academy of Sciences(NAS), formed to coordinate U.S. scientific activities with the International Geosphere-Biosphere Program (IGBP) and the NAS Committee on Global Change (CGC), can provide the interface between the U.S. governmental views and the international scientific community. In the specific area of climate, the NAS has established a mechanism for coordinating U.S. scientific activities with those of the international community through the International Council of Scientific Unions, the Joint Scientific Committee, and the Committee on Climate Change in the Oceans. NOAA scientists have been instrumental in establishing these international and domestic means of coordinating scientific strategies and respective research agendas and have extensive experience in them.

NOAA and other U.S. agencies regularly involve each other's representatives in many planning efforts. For example, NOAA scientists filled gaps in needed expertise during the recent NASA global change planning workshop. At that workshop, a member of the NOAA global climate change planning staff was invited to share NOAA's plans and concepts and to urge NOAA to integrate the two programs more completely and define mutual roles more effectively--taking advantage of each agency's in-house expertise, anticipated operating levels, and mission responsibilities.

Given these existing mechanisms for program coordination and the need to take advantage of each agency's unique mission responsibilities and capabilities, the designation of a formal "lead agency" is not necessary.

Question. Given the global nature of the effort, what foreign involvement is likely?

Answer. The Climate and Global Change program is concerned with phenomena which are inherently global in their fundamental nature. Hence, at least the data gathering, monitoring, and exchange aspects of the program must be global in extent, mandating an international effort where foreign territories may be involved. Even where foreign territories are not directly involved, such as in the open oceans, logistics and other economic considerations strongly favor an international effort. Certainly, the potential impacts and remedial possibilities are of an international nature. The institutional foundation for such an international effort is already being constructed.

On the broadest level of considerations of global change problems, an international institutional mechanism recently was created in the form of the International Geosphere-Biosphere Program (IGBP) through the International Council of Scientific Unions (ICSU). However, on an individual programmatic component basis, certain international efforts are much further along. The Tropical Ocean-Global Atmosphere

(TOGA) program is an ongoing international effort under the World Climate Research Program (WCRP). Similarly, international cooperation in global sea level monitoring and data exchange is underway through the Global Sea Level Observing System (GLOSS) program under the International Oceanographic Commission (IOC) and the Permanent Service for Mean Sea Level (PSMSL).

Monitoring of global carbon dioxide and other radiatively important trace gases in the atmosphere also involves active international participation. There are a number of bilateral efforts underway that involve the concerns of the Climate and Global Change Program, for example, the U.S.-P.R.C. bilateral agreement under the TOGA program. Certain satellite remote sensing missions (e.g., TOPEX/POSEIDON) are international in scope, as are other related programmatic efforts, e.g., World Ocean Circulation Experiment (WOCE).

Question. One of the few bright spots in the Administration's FY89 budget submission for NOAA was a $15 million initiative in climate and Global Change.

What specific agency activities would be supported by this initiative, if the funds are appropriated?

Answer. The broad goal of NOAA's program in Climate and Global Change will be: to establish the foundation for a national information service based on providing reliable predictions of global climate change and associated regional implications on time scales ranging from seasons to a century or more.

- Predicting the behavior of the ocean-atmosphere system is what makes NOAA's program and responsibilities unique and vital to a successful national effort to deal with a changing global environment. Every element of NOAA's Climate and Global Change Program will be driven by and evaluated in terms of its contribution to developing this capability. To achieve this capability and build on existing programs, NOAA is committed to a program with three primary elements:

  - Climate diagnostics and prediction, including the development and application of predictive models, and specific, climate-related data bases;

  - Global observations, analyses, and information management; and

  - Focused research on specific aspects of the climate problem needed to achieve the prediction and assessment capabilities that are the goals of the program (e.g., TOGA).

Specific activities funded by the FY 1989 proposal include:

- o GLOBAL ANALYSES AND DATA BASE DEVELOPMENT ($3M)
  - Implementation of reanalysis as source of long-term data sets
  - Improved existing data bases
  - Establishment of new baseline data sets
  - Special global analysis products
  - Interdisciplinary historical data studies
- o GLOBAL SEA LEVEL PROGRAM ($3M)
- o LARGE-SCALE OCEAN OBSERVATIONS ($4M)
  - In situ upper ocean observations
  - Quality control, data ingest, and derived products
- o STRATOSPHERIC OZONE MONITORING ($1M)
  - Joint program with NASA
- o LONG-TERM DATA MANAGEMENT ($1M)
  - Interagency planning for global change
  - Evaluation/inventory of environmetal data
  - Improved data base access
- o FOCUSED RESEARCH ($3M)
  - Interannual climate variability--TOGA

ELIMINATION OF SEA GRANT AND NURP

Question. In the Marine Hazards area, NOAA is requesting the elimination of the National Sea Grant College Program ($38.2 million) and the Undersea Research Program ($11.6 million).

What is the likelihood that the activities that are now being funded, would be funded by other sources?

Answer. The Sea Grant and Undersea Research Programs are proposed for termination because they are oriented towards satisfying primarily local, state or regional needs or conduct research not directly related to NOAA's mission. It is likely, that those activities providing sufficient benefit would be continued by state and local entities.

Question. What is the expected impact on the Universities programs being funded in these programs?

Answer. It is not possible to determine the impact of terminating federal funding for Sea Grant and the Undersea Research Program on universities. As these programs primarily benefit state and local interests, it is likely that priorty research will be continued by those entities.

WEATHER SERVICE MODERNIZATION

Question. In the past thirty years the number of deaths due to severe weather has dropped by more than 30%, due in part to more reliable forecasts of tornados, thunderstorms, and flash floods.

A) How will the Weather Service modernization affect the reliability of severe weather forecasts?

B) What reductions in weather - related casualties can we expect?

Answer. A) Data obtained from the NEXRAD radar system will allow the meteorologist to provide more lead time for warnings and to provide more specific area outlines for the warnings. The NEXRAD will show circulations within clouds which often lead to tornado and severe thunderstorm development. Present day radars do not show this circulation. Also, the radar will be able to more accurately determine rainfall amounts over more specific areas.

Warnings in the future will be issued earlier and will describe the areas to be affected by dangerous weather in more detail; i.e., instead of issuing a warning for an entire county, warnings will be for the specific part of the county that is in danger. Also, increased understanding of thunderstorms will reduce the rate of false alarm warnings.

B) The 20-year average for deaths from weather hazards in this country is as follows: tornadoes - 98, lightning - 97, and flooding - 163. Although an actual percentage reduction would be hard to determine, deaths will decrease over time because people and local governments will have more time to take actions to protect lives. For instance, local governments will be able to have low water crossings blocked before flood waters could rise to dangerous levels. Many flood deaths are caused by people driving into flooded low water crossings.

Question. In a typical year, the insurance industry pays more than $1 billion in claims due to damage caused by severe weather. In addition, uninsured damage may total more than $2 billion. The federal government spends an estimated $750 million annually due to damage caused by tornados, thunderstorms, hurricanes, and floods. One of the stated goals of the modernization is to better predict severe storms.

A) How does the cost of the modernization compare to the estimated losses that could be avoided by better storm prediction?

Answer. A) There is no simple way to compare the costs of modernization of the National Weather Service with the expected reduction in the Nation's losses that could be avoided with better weather information. Analytical difficulties arise for several reasons. First, the quantitative evaluation of losses of life (or major injury) from adverse weather is analytically very different from estimation of property losses. It is impossible to place a widely acceptable monetary value on a human life saved. Second, adverse weather may be a direct or an indirect (contributing) factor in losses to life and property. From the point of view of public policy, both direct and indirect losses are undesirable. Third, the ability to avoid loss of life is different from the capacity to reduce property losses. For example, in large tornado episodes, property loss is virtually unavoidable; however, losses of life could be avoided in nearly all cases with several minutes advance warning. And, fourth, the action to avoid losses of life or property based upon weather information requires a decision by individuals or entities beyond the control of the Federal Government. Even if "perfect" storm predictions could be provided by the National Weather Service, studies show that decision makers would not always take appropriate protective steps.

With all of these analytical difficulties in mind, several estimates have been made of losses that could be avoided with improved weather and flood warnings. Losses of life from direct and indirect weather and flood hazards may be reduced by as much as 50% as a result of the NWS modernization. Avoidable property losses, on the other hand, will vary from sector to sector of the economy, and loss reductions on the order of 10% to 20% of current levels could be expected as a result of improved warnings and forecasts. Using gross estimates of the value of losses, the benefits of improved weather and flood warning information arising from the modernized NWS will likely approach in one year, alone, the total ten-year capitalization cost of modernization.

STORM-SCALE OPERATIONAL AND RESEARCH METEOROLOGY PROGRAM (STORM)

Question. As many here are aware, I am a long-time advocate of a National STORM Program. In 1984 and 1986, I introduced STORM concurrent resolutions which were passed by the Senate. The resolutions called for development of operational and research programs to improve our nation's ability to predict storm-scale weather events.

A) What is the status of the National STORM Program?

B) I understand the importance of more detailed weather observations in providing accurate severe weather warnings. However, I also feel that improving our ability to predict severe weather is essential if we are to get the full economic return from investment in modernization. Please comment.

Answer: A) The National STORM Program is still moving forward. The goal of STORM is to harness the weather information derived from the modernized national weather observing network (advanced GOES/POES satellites, NEXRAD, ASOS, etc.) to the service of science and the nation.

As might be expected, then, the timing of STORM is very much driven by the timing of the NWS Modernization itself. As that modernization nears, STORM activity is intensifying.

Three planning efforts are underway, corresponding to three major thrusts of STORM:

1) Four-dimensional data assimilation (4DDA). This term refers to the process by which weather observations are optimally combined with numerical weather predictions to initialize forecasts.

2) Applied forecasting research. Many weather products are based on empirical approaches to weather prediction that have been tuned over the years to the capabilities and limitations of specific observing systems, particular conceptual models, and certain computer architectures. Recent research has suggested new models and algorithms. As a result, virtually all forecast procedures need to be reworked. To do this requires a mix of applied forecast research and development, trial and error, and extended evaluation of the utility of new approaches in the operational environment.

3) Scale interaction studies. Key to our understanding of severe weather development is a sound understanding of the scale interactions that govern spectral energy transfer within the atmosphere. In the past, we have been hampered in our efforts to study such interactions because of the poor spatial and temporal resolution of our operational observing systems, and the limited coverage of research networks. The modernization of the national weather observing network removes this limitation to an unprecedented extent. A priority for the scientific community is the exploitation of this opportunity for fundamental research in atmospheric science. The first such field studies will begin in 1992. These field studies will also have fundamental implications for our understanding of certain aspects of global change such as the hydrologic cycle and land-surface/atmosphere interactions.

B) The NWS modernization has focused on the improvement of localized weather warnings.

The focus of STORM remains improved prediction, as opposed to improved warnings. It is these warnings that are the mission of the NWS. To the extent which improved prediction is a by product of these warnings and prediction does not interfere with private meteorological services which are readily available, they will be pursued.

ADVANCED WEATHER INTERACTIVE PROCESSING SYSTEM (AWIPS)

Question. Over the next few years, we will invest hundreds of millions of dollars to procure new weather radars, improved satellites, and automated observation systems for the National

Weather Service. The AWIPS and NOAA-PORT have been proposed to integrate all these systems. In the 1988 OMB document, Management of the U.S. Government, AWIPS and NOAA-PORT were listed 10th among 17 "Presidential Priority Systems." Now the Administration proposes to drop funding for both.

A) What happened? Why has the administration decided to cut systems it considered such a high priority last year?

B) How would failure to support AWIPS affect the ability of the Weather Service to make full use of other new observational capabilities such as NEXRAD? GOES-NEXT?

C) Why was AWIPS cut before other components of the modernization program? Were other cuts considered in order to pay for AWIPS?

Answer: A) Replacing AFOS remains an Administration priority. However, AWIPS is a concept for an AFOS replacement, not a defined system. NWS will examine alternatives to identify the most cost-effective approaches for replacing AFOS, the existing information processing and communications systems.

B) Because the Administration is pursuing a replacement for AFOS, there will be no impact on the ability of the Weather Service to make full use of NEXRAD and GOES-NEXT.

C) NEXRAD and ASOS have already proceeded beyond the review stage that the AFOS follow on is currently undergoing. Therefore, further review of these programs is unnecessary.

The entire budget is thoroughly examined each year to determine the most cost-effective solutions to identified NWS needs.

Question: Agencies and departments like the Federal Aviation Administration and the Defense Department rely upon the Weather Service for accurate, timely weather reports and forecasts.

How will the activities of other sectors of the government be affected by cutting AWIPS and slowing down the deployment of NEXRAD?

Answer. We do not anticipte any negative impact from the reexamination of the AWIPS concept or the current NEXRAD deployment schedule. NWS is actively pursuing an AFOS follow on. NWS did not purposefully slow down the deployment of NEXRAD. NEXRAD deployment is planned and funded to proceed as rapidly as possible within the limitations of the manufacturer to produce them and the Government to install and activate them. The National Weather Service will continue to provide the most accurate, timely weather reports and forecasts possible.

WEATHER SERVICE RESTRUCTURING

Question. It has been suggested that the modernization will require extensive restructuring of the NWS, and will make dozens of local weather service offices unnecessary. In the past, proposals to close even a single forecast office have been met with rigorous local opposition. Last fall, the House-passed version of S.1667, the NOAA satellite and atmospheric bill, contained procedures for closing weather stations.

A) Would these procedures be effective?

B) When the modernization is complete, do you anticipate that Weather Service operating costs will be reduced? If so, how much?

Answer: A) The National Oceanic and Atmospheric Administration agrees with the ultimate purpose of the station closure provisions of S. 1667, i.e., to avoid any change in the status of an NWS office which would impede the delivery of severe weather warnings to the general public. However, the procedures set forth in S. 1667 are unnecessary because the existing process of consultation and decision involving the Congress with respect to NWS field operations is effective.

B) Cost containment, cost avoidance, and increased efficiency through automation are important dimensions of technical planning for the modernized NWS operations in the 1990's. Opportunities for reducing operation costs are under technical review in the Executive Branch. No estimates of potential savings are available at this time.

Question. Dr. Evans, in responding to questions regarding your nomination, you state that the plan to restructure the Weather Service is currently "under technical study in the Executive Branch." As I recall, the Department of Commerce has been working on this plan for about 10 years. I also understand that it was rejected by OMB in January.

A) Why was the plan rejected?

B) When can we expect to see an administration plan and what will it look like?

Answer. A) The DOC draft NWS restructuring plan was returned by OMB earlier this year with comments. NWS is currently evaluating and addressing these comments, in part through further technical studies. Commerce and OMB will review the results of these studies and the reused plan this summer.

B. Our goal is to finalize the restructuring plan prior to the end of FY 1989.

Question: I understand that one of the underlying objectives of the restructuring would be to collocate weather service offices with NEXRAD units. From a map of the NEXRAD network, I note that 2 NEXRAD radars have been proposed for Columbia and Charleston, SC., which currently have NWS facilities. A third weather office in Greenville was not selected as a NEXRAD site.

A) Would I be correct in assuming that the Greenville office would be slated for closure?

B) When do you expect to install a NEXRAD unit in South Carolina?

Answer. A) The status of NWS operations in the 1990's at Greenville has not yet been determined. The NWS field stations and the NEXRAD radar units will form the backbone of the new warning and forecast service programs in the 1990's. However, other NWS programs, such as the Automated Surface Observing System, will be implemented in Greenville. Management of volunteer observer and storm-spotter networks, as well as warning service liaison with emergency officials, will also be continued in the Greenville area. Formal proposals for Greenville area NWS operations will be made when technical studies for the entire modernization of NWS are completed in the Executive Branch.

B) According to current schedules, NEXRAD will be installed in Columbia in the summer of 1992 and in Charleston in late fall 1993.

EDUCATION AND TRAINING

Question: The NWS modernization will increase the amount and complexity of weather information received by individual forecasters. It will also require those forecasters to use new and technically complex types of equipment.

A) What steps are being taken by the Weather Service to train employees to make effective use of the new systems which will be available to them?

B) I understand that the Administration has proposed to terminate the Modernization and Restructuring Demonstration (MARD). Isn't this program an important component of the education and retraining efforts? Please explain.

Answer: A) The NWS is involved in a complete restructuring of our training program to address both the education and training needs of our personnel. A variety of methods will be used to give our people both the scientific understanding and the skills needed to effectively use new systems. These will range from structured workshops and seminars to individual course work.

We have begun the production of a series of videotapes and associated workbooks for forecasters to help prepare them to take full advantage of new data sources and processing and display capabilities. These training modules will include review of the structure and behavior of thunderstorms and other convective storm systems that can be studied using the geostationary satellites, Doppler radars, and wind profilers soon to become available. Planning is underway to implement intensive training campaigns as each increment of new technology becomes imminent. The training program will rely heavily on computer-assisted instruction that can be either delivered to forecasters at their work sites or used in laboratory sessions in centralized courses.

B. The effective use of new technology will mean significant change in NWS operations. Careful, staged development is vital in ensuring that these changes take place without interruption or degradation of service. Public demonstration of modernized operations will allow for coordinated adjustments by both the agency and a broad spectrum of users. Demonstration activities will be an integral part of our modernization planning. Demonstrations of new concepts, equipment, and operational capability will take a variety of forms as we develop operations with new systems.

We are now putting the final touches to plans for the development and operation of the first NEXRAD unit soon to be installed in our Norman, Oklahoma, forecast office and are planning similar "risk reduction" and demonstration projects at Melbourne, Florida, and Sterling, Virginia. The advanced training and education of the staffs of these offices are prerequisite to full project operations. We expect to significantly refine our training effort and methods through a careful evaluation of project results. These results will also do much in defining future operations which we hope to demonstrate publicly later, as NEXRAD production units are brought on line.

MARD was suspended pending review of the draft restructuring plan. It will be reevaluated once the plan is final.

NWS FAMILY OF SERVICES

Question. How much revenue is derived from the NWS Family of Services Program?

Answer. For FY 1988, the revenue to be derived from these services is $190,000.

Question. Am I correct that these revenues are deposited in miscellaneous receipts?

Answer. Yes, they are deposited in miscellaneous receipts.

Question. How do the costs and revenues of this program compare?

Answer. The revenues reflect the marginal costs for providing access to this program.

Question: What consideration has been given to making these revenues available to NOAA to offset the costs of providing these services?

Answer. Until the start of FY 1988, the revenues derived from this program were available to NOAA. Starting in FY 1988, the revenues derived from this program are deposited into the general fund of the Treasury as miscellaneous receipts as specified in OMB Circular A-25. This treatment is also consistent with 31 U.S.C. 3302(b) which stipulates that, unless otherwise provided for, all governmental receipts should be deposited in the Treasury.

NATIONAL WEATHER SERVICE

Question. NOAA has requested a decrease in 125 positions in the following National Weather Service areas:

-35 reductions in Weather Service Forecast Offices
-18 closing the Southern Region HQ (3 regions will be used)
-11 combining the Pacific Region HQ with Alaska Region HQ
-29 eliminating the agricultural weather service program
- 8 eliminating specialized agricultural fruit frost program
- 8 reducing efforts in fire weather service programs
-16 reducing unneeded meteorological technicians

A. How were the decisions made on which offices should receive staffing reductions? What staffing criteria was applied?

Answer. A) The decisions on which offices were proposed for staffing reductions were based upon:

1. the scope of programs and functions of the office
2. the current staffing level of each office as compared to that office's critical staffing level
3. the feasibility of reassigning some programs with a minimal impact upon users
4. the capability and proximity of other offices to absorb any reassigned programs

In no case does the staff decrease reduce staffing below the critical level for that office's assigned programs. The critical staffing level varies by office according to the assigned programs and functions.

Question. Who is likely to take over the agricultural weather service, fruit frost, and fire weather service programs? What assurance is there that they will be taken over by others?

Answer. Over the past decade, the private meteorological community has grown steadily in numbers and kinds of services offered. These private services are able to cover the entire spectrum of specialized meteorological services and meet the specific needs of a particular user or group of users. This includes agricultural and fire weather services.

The fact that NOAA continues operation of these programs from year to year removes the incentive for development of private sector services. NOAA believes that economic motivations will result in the private sector's rapid assimilation of the services now provided by NOAA.

In prior years, information on our services has been provided to the private sector through a series of seminars designed to encourage private meteorologists to develop a capability for providing the required services. These seminars were well attended, and correspondence since the seminars indicates that interest is still strong.

Question. What is the reaction of those who use these services?

Answer: Very few user comments have been received by the National Weather Service with regard to the proposal to eliminate Federal agricultural and fruit frost weather services. However, two principal concerns have been expressed. First, there is concern over the capability or willingness of private industry to provide a similar replacement service; and, second, there is concern over the affordability of such a service. We believe this service will be provided by private companies at an affordable cost.

AWIPS

Question. The budget request shows the elimination of the Advanced Weather Interactive Processing System (AWIPS). OMB apparently eliminated it because it was too costly. This system, however, was to be used to allow better use of the data generated from the NEXRAD, ASOS and other sources like satellites. Rep. Scheuer recently commented that AWIPS was the nerve center of the weather modernization effort and termination of the program was performing "a lobotomy on the weather service." By all accounts the current system, AFOS, is obsolete. Five million dollars is being requested to extend the life of AFOS while NOAA apparently uses the $19,348,000 now available to examine alternatives for a less costly approach. We also understand that OMB also recently rejected NOAA's plan for the modernization of the Weather Service.

A year ago, the Administration sent Congress a two-year budget for NOAA. At the time, both Commerce and OMB strongly supported the AWIPS program as one of 17 Presidential priority programs for modernizing technology in the federal government. Further, it is my understanding that ASOS and NEXRAD cannot be fully utilized without AWIPS; in fact the increased data will inundate the Weather Service like the cakes piling up on the Charlie Chaplin look-alike in the IBM commercial. Therefore, what are your plans for utilizing the data from the two new systems (ASOS and NEXRAD) without AWIPS?

Answer. As you know, AWIPS is not a defined system but a concept for an AFOS follow on. We are actively pursuing such a follow on. The modern radars (NEXRAD), improved weather satellites, and automated surface observing systems (ASOS) will provide critical observational information of unprecedented quality and quantity that are needed to define weather phenomena and their evolution.
The AFOS follow on will be designed to handle the new data. The current system is not obsolete, although it is approaching obsolescence. The $5 million requested in 1989 will be used to manufacture spare parts or modify system components to make them more maintainable. This will extend the life of AFOS at an acceptable level of reliability for several years.

Question. Why was AWIPS cut before other components of the modernization program? Were other cuts considered in order to pay for AWIPS?

ANSWER. The other major systems acquisitions supporting weather service modernization are NEXRAD, the advanced doppler, radar; and ASOS, the automated surface observing system. Both NEXRAD and ASOS have already proceeded beyond the review stage that the AFOS follow on system is currently undergoing. Therefore, further review of those programs including their cost effectiveness, is unnecessary.

The entire budget is thoroughly examined each year by NOAA, DOC and OMB to determine the most cost-effective solutions to identified NWS needs.

Question. It is my understanding that the current distribution system, AFOS is experiencing high maintenance costs and considerable periods of downtime because of its age. If this is true, doesn't the elimination of AWIPS perpetuate this problem?

Answer.

No, the elimination of AWIPS does not perpetuate the problems with AFOS. NWS plans to identify cost-effective alternatives for replacing AFOS. In the meantime, the $5 million requested for AFOS in 1989 will extend its life at an acceptable level of performance for several years.

Question. With the elimination of AWIPS, how does NOAA plan to improve accuracy and timeliness of weather warnings?

Answer. The planned modernization of the National Weather Service directly addresses the need to improve forecasts and warnings of hazardous weather and flooding through advanced technology and increased productivity. Concerning AWIPS-90 specifically, the NWS will examine alternative approaches for replacing the existing information processing, display, and communications systems to identify the most cost-effective future configuration.

The modern radars (NEXRAD), improved weather satellites, and automated surface observing systems (ASOS) will provide critical observational information in unprecedented quality and quantity that are needed to define weather phenomena and their evolution. In addition, these powerful systems will accomplish significant data processing functions and automate many time consuming manual tasks. The AFOS follow on is currently under review by NWS to identify the most cost-effective alternative to meet NWS' information processing and communications needs. It will permit full use of the additional NEXRAD and ASOS data which will further improve the accuracy and timeliness of weather warnings.

Question: The original NWS schedule called for the award of multiple Definition Phase contracts in September 1987. What has caused the delay in the award of these two contracts?

Answer. A number of milestones are taking longer than planned to complete. Specific problems encountered include: a delay in release of the Definition Phase RFP; offerors' requirement for extensions on the due dates for submission of the original proposals, and a similar requirement for more time than originally allowed to prepare subsequent proposal clarifications in response to government questions; added time to complete the government evaluation activities; and increased time to complete Defense Contract Audit Agency audits of the competing firms prior to the request for best and final offers. Since the original schedule was extremely tight, there was little opportunity to compensate for these increased time requirements through acceleration of other activities.

Question: How much has been spent on AWIPS to date?

Answer. Through FY 1988, $32.9M has been appropriated specifically for AWIPS-90, through March 31, 1988 a total of $21.9 million has been obligated. AWIPS is a concept, not a defined system, for replacing AFOS,the current information processing and communications system. The work completed to date and planned for 1988 is necessary and relevant to defining the replacement for AFOS.

Question: Given the great amount of time and resources expended on both the part of the administration and a large number of contractors on the requirements definition and design of the AWIPS-90 system; does the Administration now believe that this investment should be ignored and the $19,348,000 available in 1988 be used for a new study?

Answer. The investment to date in the AFOS follow on system is not being ignored. The work so far completed and that planned for FY 1988 is all necessary and relevant to defining replacement for AFOS.

Question: Are we agreed that using the $19,348,000 for further study and not to proceed with the Definition Phase contracts will be subject to our reprogramming procedures?

Answer. Once a decision is made regarding the use of the $19,348,000, and if the reprogramming notification requirements are triggered by that decision, a notification will be sent to Congress.

ASOS

Question: The budget request includes $6,250,000 for the Automated Surface Observing Systems (ASOS) which NOAA expects to spend more than $60,000,000 through FY 93. ASOS is to provide continous surface weather observations. It will be used by NOAA, FAA, and DOD. Ultimately, more than 1,500 ASOS may be in place by the mid 90's. Site preparations are expected in FY 89 along with preproduction testing.

How does ASOS complement NEXRAD?

Answer. ASOS observations complement NEXRAD and satellite data by serving as "ground truth" in calibrating, verifying, and correcting the remotely-sensed observations. Experienced weather forecasters will employ a combination of NEXRAD, ASOS, and other observational information to diagnose and clearly understand developing weather. NWS also will use ASOS to furnish the dynamic variables needed for analysis to determine the initial conditions for numerical weather modelling. Furthermore, the automated nature of ASOS will benefit NWS operations by eliminating most manual tasks currently involved in taking the surface observations. Finally, ASOS observations obtained from systems acquired by both NWS and the FAA and deployed at the Nation's airports are mandatory and legally required for aircraft operations.

Question. What staff reductions are expected through the use of the ASOS as opposed to the manual observations?

Answer. About 1,200 different persons spend part of their time making manual observations, along with numerous other responsibilities such as preparing and disseminating weather data and information, coordinating with other offices and emergency officials, etc. Competing demands for the time of these people are serious during threatening weather conditions which demand both extra observations and critical service activities. ASOS will free service personnel to concentrate on analyzing and interpreting the greatly increased amount of detailed weather information from the new observing systems, preparing and disseminating warnings and forecasts, and providing critical services. NWS plans to evaluate further the extent to which the installation of ASOS, as part of the entire modernization effort, can be translated into staff savings through increased productivity.

Question. NOAA is requesting $53,900,000 for 1989 and will be spending over $440 million through FY 93 on the Next Generation Weather Radar (NEXRAD) - a system to replace existing weather radars. Recently NOAA awarded a contract to UNISYS to begin construction and placement of the first 10 NEXRAD. Ultimately 165 will be placed throughout the U.S. but we understand that the entire U.S. will not be covered.

What testing has and will be done to insure that the NEXRAD will operate as advertised?

Answer. During the Validation Phase, which was completed on June 30, 1987, the preproduction unit that was produced by Unisys Corporation underwent extensive development test and evaluation to ensure that the performance characteristics met the NEXRAD specifications. Also, an independent tri-agency operational test and evaluation was conducted and managed by the Air Force Test and Evaluation Center (AFOTEC). The Unisys preproduction unit was evaluated to ensure that the system was capable of meeting defined operational effectiveness and suitability objectives related to the NEXRAD specifications and the initial operating capability. The Unisys preproduction unit satisfactorily met the established operational effectiveness criteria and AFOTEC recommended that the preproduction unit be fielded. The result of the initial operational test and evaluation was one of the factors considered in selection and award of the Limited Production Phase contract to Unisys Corporation on December 1, 1987.

In parallel with the Limited Production contract task, the eproduction unit will undergo additional operational test and evaluation during the spring of 1989 at the Norman, OK, Operational Support Facility. The Air Force Test and Evaluation Center will lead and manage this tri-agency operational test. The result of this effort will be the basis for proceeding with the Full-Scale Production contract option.

Question. When will the first units be installed?

Answer. The first limited production unit is scheduled for delivery and installation at Oklahoma City in early 1990.

Question. Where will test units be located? How was the schedule developed?

Answer. The Unisys preproduction unit, which was tested and demonstrated during the Validation Phase at the contractor's test facility, will be installed at the NEXRAD Operational Support Facility, located in Norman, Oklahoma, in September 1988.

A detail siting study and analysis was conducted in 1982 and 1983 based upon defined site selection criteria, which included coverage requirements for each of the participating agencies. Based upon the results of this process, candidate NEXRAD site locations were identified; and preliminary and in-depth site surveys were conducted to complete the final site process.

Question: How was the total number of NEXRAD locations determined? What areas of the country will not be provided coverage and why?

Answer. A detailed siting study and analysis was conducted in 1982 and 1983 based upon defined site selection criteria, which included coverage requirements for each of the participating agencies. Based upon the results of this process, candidate NEXRAD site locations were identified; and preliminary and in-depth site surveys were conducted to complete the final site process.

Areas not provided NEXRAD coverage at 10,000 feet are primarily in the intermountain west region of the conterminous United States where little or no population centers exist. Due to the mountainous terrains of those areas, it would require twice as many NEXRAD units to provide full coverage at 10,000 feet. The cost and benefit to provide additional NEXRAD units is not warranted.

Question: What provisions are there for training the operators and users of this system?

Answer. The Limited Production Phase contract makes provisions for Unisys Corporation to provide training equipment and courseware, training curricula, and lesson plans and material for field operators and maintenance personnel. The contract also makes provision for

Unisys to provide at least one training course for instructors, field operators, and maintenance personnel with options for additional courses to be provided by Unisys until the Government is ready to provide follow-on training to operators and maintenance personnel.

NOAA-PORT

Question. According to the joint NOAA/NASA report, Space-Based Remote Sensing of the Earth: A Report to the Congress, dated September 1987, the National Weather Service communications system is overloaded (pg. 78). As a result, delivery of some National Meteorological Center (NMC) guidance and analysis products are being delayed to field forecast offices. NOAA had intended that phase I of its NOAAPORT system would provide a means of providing more timely delivery of NMC products and guidance. However, NOAA's budget shows an elimination of funding for NOAAPORT. NOAAPORT, which was initiated with $3.5 million in FY 88, was to be a system that would allow for formatting and distributing data in support of AWIPS and meeting NOAA's needs for near real-time data distribution.

Question. What is the purpose and status of NOAAPORT?

Answer. The purpose of NOAAPORT is to enhance both the capabilities of the internal NWS communications network and the distribution of data and products to the user community. This would be accomplished by expanding the current capacity to distribute the centrally prepared and collected data to the NWS field offices, and to do it in such a way (e.g., via satellite broadcast) as to make these data accessible to the user community. The NOAAPORT requirements are being evaluated and refined in conjunction with the review of the AFOS follow on system.

Question. If NOAAPORT is disconnected, how does the NWS plan to distribute environmental data and products to the user community, especially since the current NWS communication system is overloaded?

Answer. Today the NWS makes its critical warning and forecast products available to the user community via the NOAA Weather Wire Service (NWWS) and via NOAA Weather Radio (NWR) broadcasts. In addition, the NWS makes limited observational data and forecast products accessible to the user community by means of the Family of Services (FOS) program. The NWS will have to continue to rely on these methods to make its data and products accessible to the user community while an AFOS replacement is pursued.

Question. Since NOAAPORT was to be an integral part of AWIPS-90, how will the Weather Service insure timely receipt of weather information with the demise of NOAAPORT and AWIPS-90?

Answer. NWS is exploring alternatives for meetings the NOAA-PORT requirement consistent with the evauation of the most cost effective replacement for AFOS which will ensure timely receipts of weather information.

Question. Why is NOAA-PORT being terminated? Does the need for such a system no longer exist? How much of the $3.5 million of FY 88 funds were spent and what was gained by the expenditure?

Answer. We are exploring less costly alternatives for meeting the National Weather Service requirements as a continuing need. The use of FY 1988 funds will be determined in light of a reevaluation of the communications system replacement.

COMPUTERS

Question. We understand that Jet Propulsion Laboratory has developed a new supercomputer which is much faster than existing computers. Reportedly one of its best uses is for weather forecasting because of all the satellite data that must be quickly analyzed in preparing weather forecasts. Reportedly, the European Centre for Medium-Range Weather Forecasts has a higher accuracy rate for its weather predictions than the United States.

What generation are the computers employed by the National Weather Service's National Meteorological Center? What plans does the Service have for installing more advanced computers?

Answer. The computer that has been developed by the Jet Propulsion Laboratory is an experimental, thirty-two mode parallel processor built in conjunction with the California Institute of Technology. Massively parallel computer systems appear to have the potential by the mid to late 1990's to execute weather forecast models faster than possible on the 4 to 8 processor systems available today. However, considerable hardware and software development effort is needed before this type of system can be used for operational forecasting. The National Meteorological Center is following closely the development of massively parallel systems and has entered into an agreement with the National Center for Atmospheric Research and the University of Colorado to explore their potential for operational forecasting.

The National Weather Service currently uses two CDC 205 computer systems. These single processor systems are entry-level Class VI computers. The first CYBER 205 was installed in 1983 and the second in 1986.

The Weather Service has no current plans to install more advanced computers as the current supercomputers are sufficient to meet NWS needs. The need for new computers will be reviewed during future budget formulation cycles.

Question. What will the costs be for these more advanced computers?

Answer. The acquisition cost for a single Class VII computer is estimated at $15 to $20 million. A two-computer system with necessary support devices for mass storage and communications would probably cost $60 million. The need to replace the current NWS super-computers was recently reviewed and the decision made that they did not require replacement at this time.

SATELLITES

Question. The Justifications do not contain much information about the satellite programs. We appreciate the briefings Dr. Friday and Mr. Pyke have given the staffs of the Appropriations and Commerce Committees. Next year we expect that the additional information will be in the justifications.

As you know, we are operating under the rubric of an overall increase of 2 percent in 1989 over 1988. NOAA's overall budget is a net decrease of $45,000,000, but that includes $240,000,000 of programs proposed to be eliminated. Over the last 7 years the Congress has opposed the elimination of Sea Grant, Coastal Zone Management, etc., and having come this far we are not going to kill them now.

As we reach this juncture the satellite programs are coming into the expensive part of their funding cycle. The polar requirements increase by $55,000,000 and the geostationary system increases by $44,079,000, or about $100,000,000 in all. We realize the public safety implications of denying the funding, but these huge increases certainly came along at the wrong time.

Can we reduce these 1989 requirements, for instance, if there is some $32,000,000 in contingency in the spacecraft estimates for 1989. Could we take that out?

Answer. The FY 89 budget request is based on NOAA's and NASA's best estimates of the cost of the polar orbiting and geostationary spacecraft systems. Reductions from the requested level of funding would introduce risks to the continuity of both programs, delays in spacecraft delivery, and higher total program costs.

Program contingency is an integral part of the NASA cost estimates. It is based on the amount and technical uncertainty contained in each program. FY 89 could be particularly sensitive to changes in the amount of contingency available because the GOES I-M program will be producing a new generation of spacecraft and the NOAA KLM program will be in the first full year of a new spacecraft series.

Question. In 1985, the General Accounting Office reported that the average cost of the geostationary satellites had increased from $18,600,000 to $68,100,000. Similarly, the average cost of the polar satellites had increased from $17,900,000 to $75,000,000. What is the average cost of these satellites today?

Answer. The average cost of a NOAA KLM series spacecraft is $136M. The average cost of a GOES I-M series spacecraft is $97M. The average cost of the GOES spacecraft includes approximately $16M to cover the non-recurring development cost for this new generation of spacecraft.

Question. NOAA operates two geostationary weather satellites (GOES) and two polar orbiting weather satellites (POES). Funds are requested to continue with these efforts. $172.1 million is requested for GOES and $130.4 million for POES. NOAA is planning on using a private party to launch their future satellites. The DOD also has two polar orbiting weather satellites.

What effect will the major efforts in surface weather modernization have on the continued need for 4 NOAA weather satellites?

Answer. The POES satellites provide global coverage compatible with numerical forecasting needs and the GOES provide the hemispheric coverage for the continental U.S. (CONUS) and adjacent ocean areas for near real-time regional and local area forecasting. The need for GOES and POES coverage continues undiminished. The weather satellites will provide a major input into the modernized weather service.

Question. The GAO reported that NOAA and DOD should, in the future, look to combine efforts or at least maximize the use of common items since the same contractor builds both satellites. What were NOAAs and DODs reactions to the report and what efforts have been taken to adopt the recommendations?

Answer. NOAA, through NASA which procures satellites for NOAA, and the Air Force have actively pursued use of common components for our polar-orbiting meteorological satellites. An effort has been made to consolidate procurements of these common components so that economies benefit both programs. Where changes in design have become necessary, both agencies participate in definition of requirements and technical review of the changed designs, and both agencies share development costs. Additionally, we have occasionally been able to consolidate procurement of spare components so that a single unit could satisfy both the USAF and NOAA needs, avoiding procurement of an additional unit. Combining DOD and NOAA polar satellite efforts would not occur until the late 1990's. Further study of this issue is under consideration.

Question. What is the status of NOAAs effort to acquire private launches for their satellites? Why was the decision made to seek a private launch? What are the cost comparisons with NASA or DOD launches?

Answer. NASA is procuring commercial launch services for NOAA's GOES I-M series of satellites as stipulated in the FY 1987 Supplemental Appropriations Act. Negotiations have been completed with the selected contractor, NOAA has concurred in the terms and conditions, and contract award is anticipated in early April.

The decision to procure commercial launch services for GOES I-M from the private sector was based on a firm conviction that the GOES launch requirements could be met satisfactorily in this way and, at the same time, provide a stimulus for the emerging U.S. commercial launch service industry.

As a result of this decision to procure commercial launch services, and the resulting completion to select the contractor, the cost to

Question. What will the benefits be as measured in improved forecasts?

Answer. The Administration does not feel it is appropriate at this time to replace the current NMC computers. Once a decision is made that they need replacement, we anticipate they will assist in the following areas.

- o Warnings of severe weather conditions including hurricanes, floods and heavy snow.
- o Day-to-day weather forecasts as for as 8 days in advance.
- o Forecasts of average monthly and seasonal weather.
- o Wind forecasts for aviation flight planning.
- o Sea state forecasting for water transportation interests.

Question: It is true that the European Centre for Medium-Range Weather Forecasts has a higher accuracy rate for its weather forecasts than the U.S.? If so, to what do you attribute their better forecast record. What would it take for the U.S. to attain the same level of forecast accuracy? Is it worth the incremental cost?

Answer. The numerical weather forecasts from the European Centre for Medium-Range Weather Forecasting are more accurate than those from the U.S. National Meteorological Center. The data available to both centers is roughly the same. The techniques in use at all centers are widely published and available in literature. The primary difference is in the power of the computers used to produce the forecasts.

The decision was recently made that the current NWS computers do not need replacing i.e., it would not be worth the incremental cost.

Question: If the NWS were to install more advanced computers and not implement the AWIPS-90 system, what would be the impact?

Answer. The situation described is purely hypothetical as the Administrations feels that it is inappropriate at this point to replace the NWS computers but is pursuing an AFOS follow on system. The NWS plans to identify the most cost-effective replacement for AFOS, the current information processing and communications system. This replacement system will accommodate the forcaster guidance products generated by a new supercomputer, once such a computer is determined to needed.

the Government for these launches is substantially lower than the cost that had been estimated by NASA for Government business-as-usual launches for these satellites.

LANDSAT

Question. NOAA is requesting $34,100,000 for the construction of Landsat 6 and a ground station. However, NOAA has eliminated the funds ($26,700,000) for the operation of Landsat 4 and 5. NOAA has renegotiated a revised contract with EOSAT in accordance with the Continuing Resolution. There is a requirement for the negotiations to be completed by April 1. In addition, NOAA recently awarded contracts for developing a plan for advanced civil land remote sensing beyond Landsat 6 to KRS Remote Sensing ($940,000), Analytic Sciences Corp. ($566,000) and the Edan Group ($50,000).

A. We will make part of the record a letter from Assistant Secretary Bulow notifying us that the contract had been renegotiated, including a letter from the Air Force. What are the major changes in the contract?

Answer. The major changes in the Landsat contract include:

- The modified contract provides for one satellite (Landsat 6) and associated ground system for a cost not to exceed $220 million and for a government provided launch on a Titan II vehicle about June 1991.
- The overall Landsat 6 program costs ($256.5 million) will be less than that proposed in the approved October 15 plan ($257.5 million).
- The contract modification calls for an innovative revenue sharing arrangement from EOSAT where they will payback the Government a total of $10.8 million from their net revenues. The Landsat 6 spacecraft and ground system will be a net cost to the Government of $209.2 million after payback.
- The contract modification calls for a waiver of EOSAT's right to revenues from sales of unenhanced Landsat data after Landsat 6, if they do not provide Landsat 7.

Question. Landsat 6 is now to be launched in June 1991. Landsats 4 and 5 are expected to expire by September 30, 1987. There is a gap of 2 years and 8 months where EOSAT will have no new data to sell. How do you expect EOSAT to recover its customers from the French and possibly other providers of land remote sensing data during that gap?

Answer. During a data gap prior to operation of Landsat 6, EOSAT will continue to market data from their data base and the Landsat archive. EOSAT estimates revenues of $10 million per year during this period. The relationship between Landsat and SPOT has been mutually beneficial in encouraging and developing the overall market for remote sensing data of the earth. During a Landsat data gap, most Landsat foreign ground stations will be receiving data from

SPOT, and planning to receive data from other systems as well, until EOSAT is again able to deliver data after Landsat 6 is launched. EOSAT is expected to be competitive with Landsat 6 and will quickly regain market share. EOSAT expects revenues of $45 million during the first year of Landsat 6 operation.

Question. I get the feeling that commercialization is no longer a reality and now we are struggling to maintain a U.S. land remote sensing program. What are NOAA's views regarding the benefits of a continuing U.S. Landsat system? What about the growing competition from foreign countries like France (SPOT satellite), Japan (Marine Observation Satellite and Earth Remote Sensing satellite), and even the U.S.S.R. is now offering to sell images from space?

Answer. NOAA is committed to finding a way to have a U.S. commercial advanced earth remote sensing system beyond Landsat 6 in which the capital costs are funded by the private sector. The foreign competition in earth remote sensing is indeed increasing. However, there is no reason that U.S. industry can't or shouldn't compete with foreign companies as they have in other high technology industries.

Question. How much of EOSAT's current revenues are sales to federal agencies?

Answer. About 32% of EOSAT's current revenues are from sales to federal agencies.

Question. Where will EOSAT get $2,500,000 a year to give NOAA during the years there is no Landsat operating?

Answer. The contract modification provides that EOSAT payback from their net earnings the first $2.5 million annually beginning with calendar year 1988. During the period that there is no Landsat operating, the Government payback would depend upon EOSAT's net success in marketing from the Landsat data base. We fully expect Landsat 6 to provide the remaining revenues for EOSAT to payback the total amount of $10.8 million.

Question. Landsat 4 & 5 may continue operating beyond September 30th. What funds are available for that contingency?

Answer. There are no contingency funds available for operation of Landsats 4 and 5 in FY 1989.

Question. With regard to the planning effort for after Landsat 6, What specifically have you contracted with each organization to study? Why is more than one study needed? What role will EOSAT, the private Landsat operator, have in this process?

Answer. The Department of Commerce awarded three contracts for studies of options for advanced civil commercialized earth remote sensing system. Two contractors, KRS Remote Sensing and The Analytic Sciences Corp., are conducting comprehensive studies into all aspects of an advanced commercialized system, including market survey, financing, sensor and data processing technology, and spacecraft technology and launch options. The Egan Group is conducting a focused study on innovative financing options for such a system. We deliberately sought more than one contractor in order to obtain as many different points of view from private industry as was determined to be useful.

EOSAT plans to complete their own study for Landsat 7 by May 1988 and has indicated that they will provide a copy of their results to NOAA for consideration in our planning process.

LANDSAT COMMERCIALIZATION

Question. Currently pending before the subcommittee is a new contract agreement between the Department of Commerce and the Earth Observation Satellite Company (EOSAT).

If the Subcommittee approves this contract, what is the likelihood that EOSAT will be a commercial success and the United States will have a continuous flow of land remote sensing data for its user community?

Answer. The Department is committed to finding a way to have a U.S. commercial advanced earth remote sensing system beyond Landsat 6 in which the capital costs for spacecraft, instruments, launch and ground systems are financed from private sources. The modified EOSAT contract for Landsat 6 is an important interim step that will contribute to a continued U.S. presence in civil earth remote sensing and to long-term commercial success.

Question. Is the Department committed to substaining the operation of Landsat 4 and 5 (the currently operating satellites) for as long as possible in order to enhance the commercial potential of EOSAT? If so, why are there no monies requested in the FY 1989 Budget Request?

Answer. Since the fall of 1987, Landsats 4 and 5 have been operated in a manner which has the potential for extending their operating lifetime. However, Landsats 4 and 5 are presently operating well beyond their expected lifetimes. We will review the operational status of Landsats 4 and 5 this summer and determine a recommended course of action at that time.

Question. Pursuant to the proposed contractual agreement, a cap of $256.5 million will be established -- this consists of $220 million of the spacecraft (Landsat 6) and $36.5 million for the launch of the spacecraft on an Air Force Titan II Rocket. This cap of $256.5 million is surprisingly $1 million less that the revised plan that was submitted to the subcommittee just last October -- That cap was $257.5 million of which $209.2 million was for the spacecraft and $48.3 million for the Titan II launch.

Could you please explain to the Subcommittee how the launch cost of this spacecraft on an Air Force Titan II rocket has been reduced $12 million since last October? Would I be correct to assume that the

Department and EOSAT negotiated the cost of the spacecraft and that the Air Force was required to reduce the cost of the launch in order to stay within total program cap? (Note -- the Air Force agreement to provide the launch for $36.5 million was received by NOAA until March 9).

Answer. No. It is not correct to assume that the spacecraft costs were negotiated first and the AirForce was forced to reduce its launch costs to stay within the total program cost estimate. On March 9, 1988, the Secretary of the Air Force approved an additive cost policy for NOAA space launches on Titan II which is similar to the existing arrangements now in effect for NOAA's use of converted Atlas E boosters for the polar meteorological satellite program. Discussions with the Air Force under a revised pricing policy were initiated long before the Secretary signed the March 9th letter. During negotiations with EOSAT, it was understood that the Government's ability to sign the contract modification within the total available funding was contingent on this expected reduction in the Air Force launch cost. This resulted in a reduced cost to NOAA for the Landsat 6 launch from $48 million to $36.5 million.

Question. What are the reasons for the $11 million increase in the cost of the spacecraft in the proposed contract and the plan submitted to the Subcommittee last October? Is the proposed revenue sharing agreement contained in the proposed contract meant to recoup this increase in the satellite cost? If so, why not just reduce the cost of the satellite and let EOSAT retain its revenues?

Answer. The $11 million increase in the cost of the spacecraft and associated ground support systems in the modified contract as compared to the October 15 plan was a result of the negotiations with EOSAT. EOSAT entered the negotiations with an offer substantially higher that the $220 million eventually agreed to. The revenue sharing arrangement with EOSAT will result in an overall net cost to the government for the spacecraft and associated ground system as low as $209.2 million. As part of the total negotiated package, which includes a waiver by EOSAT of rights to Landsat-type data beyond Landsat 6, EOSAT agreed to this payback arrangement, in which payback is dependent on revenues from andsat 4,5 and 6.

Question. Pursuant to the proposed contract, EOSAT will develop a new ground station for Landsat 6.

Could you please inform the Subcommittee where the new ground station will be located and what the estimated cost of the new ground station will be? Is that cost assumed within the proposed funding of $256.5 million?

Answer. The new Landsat 6 ground system configuration and location is up to EOSAT to determine. The cost of the ground system is included within the proposed total funding of $256.5 million.

Question. Will EOSAT be permitted to use the equipment currently used for the control of Landsat 4 & 5 in this new ground station? Does the government retain title to the equipment? And is EOSAT permitted to use the equipment only for the life of Landsat 6 or as long as they desire?

Answer. NOAA has offered the use of NOAA-owned equipment located at the Goddard Space Flight Center (GSFC). The government will retain title to all equipment used by EOSAT. EOSAT will be permitted to use the equipment during the useful life of Landsat 6.

Question. To date, $152.5 million has been appropriated for Landsat. Could you please inform the Subcommittee as to how much of that funding has been obligated and expended by EOSAT? Is a condition of the contract the requirement that EOSAT maintain a balance sufficient to terminate the program if the Federal Government cancelled the program? What is the amount of funding retained by EOSAT for termination? I am correct to assume that if the Congress were not to approve the proposed contract that no termination funding would be required?

Answer. To date, NOAA has obligated $95 million for construction of the follow-on Landsat space and ground system. The remainder of the $152.5 million ($57.5 million) could be obligated until the contract modification was approved by Congress. EOSAT's cummulative costs total about $79.1 million as of March 22, 1988. The contract requires that EOSAT maintain a balance sufficient to terminate the Landsat development program if cancelled by the Government. The amount required to terminate the Landsat development program is likely to equal but cannot exceed the remainder of the $95 million ($15.9 million). The Government can terminate the Landsat development contract without additional funding.

Question. Pursuant to the proposed contract, Landsat 6 will be launched in June of 1991. In the October 1987 plan, Landsat 6 was scheduled for launch in April of 1991.

What is the reason for that slippage? Doesn't that mean there is a very good chance that there will be a data gap of nearly 3 years between the assumed demise of Landsat 4 & 5 and the launch of Landsat 6? With a data gap of this duration, how can we assume that Landsat can be commercially viable?

Answer. The project launch date for Landsat 6 has slipped from April 1991 to June 1991 due to the slippage in signing of the contract modification from February 1988 to April 1988. Landsat 6 will take 38 months from the award of the contract modification to build, test, and be ready for launch. We do not know how long the data gap will actually be. EOSAT has always included a data gap in their business plan. EOSAT expects revenues of $10 million per year during the gap by selling archival Landsat data, and then a jump to $45 million in the first year following Landsat 6 launch. Due to other countries continuing the world awareness of and dependence on Landsat-type data, EOSAT will be able to regain its share of the worldwide market when Landsat 6 is launched.

Question. What foreign land remote sensing systems are currently in operation and marketing land remote sensing data? What additional foreign systems are scheduled to come on line? Isn't it quite clear that there is considerable competition for the land remote sensing market?

Answer. Foreign land remote sensing systems currently in operation and marketing data include the French SPOT system marketed by the SPOT Image Corporation and the Soviet space photography marketed by Soyuzkarta.

The Japanese (JERS-1) and the Europeans (ERS-1) both plan earth remote sensing satellites with optical and radar sensors for about 1991 or 1992. Data availability from these systems is dependent on arrangements that these foreign governments and agencies negotiate with other receiving stations.

At this time, only SPOT Image Corp. (French SPOT system) and EOSAT (U.S. Landsat system) have announced data from these systems will be marketed commercially and available readily through commercial distributors worldwide. It is likely that there is additional competition shaping in the land remote sensing market.

Question. Would you please inform the Subcommittee if the parent companies are taking their normal profit on the sale of the spacecraft and remote sensing instruments to EOSAT? What is the level of profit and what is the percentage of profit being obtained? Does this reflect a corporate commitment to the program?

Answer. The contract as modified has a Not-to-Exceed value of $220 million. To the extent that EOSAT's audited costs under this contract, including those of Hughes and GE Astrospace as subcontractors, are less than $220 million, the amount of profit that EOSAT (including Hughes and GE) will be permitted to retain will be the subject of future negotiations between EOSAT and the Government.

Question. The Department recently awarded a series of contracts to firms to study advanced civil remote sensing satellite systems -- The follow on systems to Landsat 6. These studies are focused on marketing, finance, sensor and data technology, spacecraft technology and launch options. The intent is to come up with a follow on system that requires no Federal support.

Does the fact that the Department contracted for these studies reflect its doubt in the commercial viability of EOSAT and a significant change in attitude towards the commercialization of remote sensing systems?

Answer. The Administration remains committed to finding a way to have a U.S. commercial advanced earth remote sensing system beyond Landsat 6 in which the capital costs for spacecraft, instruments, launch and ground systems are financed from private sources. The Department contracted for these studies as part of its revised Landsat commercialization plan and at the direction of Congress to reexamine how best to achieve commercialization. Neither the negotiated contract modification nor these studies reflect doubt in the commercial viability of EOSAT or a change in attitude towards the commercialization of remote sensing systems.

Question. Are these studies permitted to assume that the Federal Government would be willing to enter into data purchase agreements if that were to enhance the commercial viability of the proposals? What limits or guidance has the Department given these contractors on this issue?

Answer. Yes, the study contractors are expected to look at all options including Federal data purchase agreements, and to recommend a course of action that, in their opinion, would provide the most commercially viable advanced civil earth remote sensing system for the United States. The Department has not limited the study contractors on this issue.

Question. If the Federal Government were to enter into a data purchase agreement with EOSAT would that enhance the commercial viability of the proposal?

Answer. We don't know; however, we expect that the three study contractors will address this issue.

SHARED PROCESSING ARRANGEMENT

Question. We understand that by October 1988, the Shared Processing operation between NOAA/NESDIS, the U.S. Air Force Air Weather Service, and the U.S. Navy's Naval Oceanography Command will be in full operation. Under the Shared Processing Agreement, the Air Force is responsible for processing satellite cloud data for the other two agencies, NOAA is responsible for processing satellite sounding data (reading of atmospheric temperature and moisture), and the Navy is responsible for sea surface temperature data.

What is the status of the Shared Processing arrangement? How much will it cost the U.S. Government, by agency? What benefits does the NWS hope to gain from this arrangement?

Answer. The Shared Processing Agreement is in initial operations with a limited set of data being shared between the U.S. Air Force, Navy and NESDIS. Each agency, the Navy, Air Force and NOAA, funds $176,000 for their share of the dedicated commercial communications service. The NWS will benefit from the added source of global coverage of atmospheric soundings and, as new ocean data becomes available, from more extensive surface wind fields for model input.

Question. How does NOAA plan to use the sounding data provided by the Defense Meteorological Satellite Program (DMSP) satellites. Is the DMSP sounding data compatible with the NWS computer models? Is it accurate enough to be used by your forecast models?

Answer. The DMSP sounding data will be used to supplement the NOAA satellite soundings for input to the NWS numerical forecast models. The soundings derived from the DMSP microwave soundings are in a format compatible with the NWS numerical data bases. However, the DMSP orbit times are not optimum for NWS computer model runs. DMSP sounding data are accurate enough to be used on a backup basis for our forecast models.

Question. What will be the impact on the shared processing agreement of not implementing AWIPS-90?

Answer. Not implementing AWIPS-90 has no impact on NOAA's continuing need for DOD satellite data.

NATIONAL DATA CENTERS

Question. Dr. Evans, you have mentioned that the agency will issue a request for information to assess private sector interest in NOAA data archives.

Are you suggesting that the Administration would like to privatize the National Data Centers? Please explain.

Answer. It is Administration policy to perform Government functions as efficiently as possible, which may include privatizing certain operations. NOAA's Data Center Request for Information (RFI) is a mechanism to explore private sector interest and capability to perform all or part of these complex functions. The NOAA Data Center RFI encourages innovative approaches and alternative systems for data management and dissemination. It increases the awareness of this national resource maintained by NOAA, and fosters economic growth by stimulating value-added products and services.

CONSOLIDATION OF NOAA

Question. On November 10, 1986, the Silver Spring Metro Center was identified as the site for the consolidation of NOAA. On February 17, 1987, GSA purchased the first of four buildings to be erected on that site. We are awaiting a reprogramming request authorizing the use of NOAA's funds to move into Building I, which is the only building now on the site.

While we have not received a reprogramming, we have received the reports of Commerce's acting Inspector General, NOAA's response to the IG, and the IG's letter of March 14, 1988 to acting Deputy Secretary Tuttle. In addition the staff has viewed the site.

As one who has long sought a consolidated headquarters for NOAA, I am certainly interested in this move. Years ago we talked of using Fort Lincoln, and recently there was discussion of using the Navy Yard for NOAA, the Coast Guard and other water-related agencies. The Navy Yard would have been ideal and pardon me if I am not enthused about Silver Spring.

As I understand the Inspector General's report, he is concerned about two things, primarily: (1) the decision to move NOAA's senior managers into Building 1, and (2) the projected cost of the move -- approximately $41,000,000 -- and the source of those funds in a constrained budget atmosphere. Those are good questions.
The Inspector General recommends that the weather service personnel in the Grammax Building - which everyone acknowledges is in horrible condition -- move into Building I instead of the Department's plan to move the senior managers into Building I. He makes the point that the senior managers will be isolated in Silver Spring for at least 2 years until the second building is completed, and that their movement will not reduce the Department's inventory of buildings.

Certainly we all look forward to the day that NOAA's senior managers will be in one location, but aren't we sacrificing management effectiveness by separating them from their line organizations?

Answer. It was our initial decision to use Building 1 to consolidate NOAA's senior managers, thereby providing the opportunity to increase interactions among NOAA leadership and to achieve a number of managerial benefits. This plan, however, has several negative aspects, not the least of which is the belief by some that the benefits of having NOAA's top managers together do not outweigh the benefits of keeping managers with their respective line organizations.

NOAA plans to move the entire Washington area NMFS and OAR line organizations including senior management into Building 1 and using the second building, which is now under construction, to house all Grammax Building operations. This plan has the support of the Department's Acting Inspector General and the Administration.

Question. Admittedly all of Grammax will not fit into Silver Spring I, but couldn't the small overage be housed in some leased space until Building II is ready, and thereby reduce the goal of releasing Grammax and reducing the overall space costs?

Answer. 21,000 square feet of the larger Grammax Building cannot fit into the new building. To achieve the goal of releasing the Grammax Building, GSA would have to solicit and lease interim space, prepare the space to meet NWS requirements and move the units to the temporary building. This would take GSA a considerable amount of time and would increase the overall project cost. It would also result in adding yet another split-site operation to the already scattered number of NWS locations.

To avoid this situation, it is far better to wait a few additional months and use Building 2 to house all Grammax Building operations. Conditions of the Grammax Building have improved in recent months. GSA has delegated operation and maintenance responsibilities to NOAA, allowing us to work directly with the landlord on tenant and building problems. GSA has also agreed to some immediate building repair work.

Question. How much additional will it cost to move the Grammax personnel into Building 1 and then move them into Building 2 when its completed?

Answer. The estimated relocation cost is $200.00 per workstation. At 800 workstations, moving the Grammax Building to Building 1 would cost $160,000. The cost to again relocate to Building 2 is an additional $160,000 for a total cost of $320,000.

Question. Why is it that in December, NOAA told the IG that moving Grammax instead of the senior managers would set things back 6 months, and now NOAA says occupancy would be delayed 14-17 months? This is particularly interesting since it only took 16 months to construct the building and now someone want us to believe it would take as long to finish the interior.

Answer. The 6 month estimate is only the time needed to redesign the building interior. GSA's estimate of 14 to 17 months encompasses the full scope of effort needed to implement the change, including negotiating a change to the design services contract, actual redesign work, negotiating the cost of construction, installation of furniture and phones, and occupancy. Because NWS requirements include design and construction of special purpose spaces, redesigning Building 1 to accommodate their needs would take longer than other NOAA organizations that only required office space.

It may have taken the developer only 16 months to construct Building 1, but it is just an empty shell. Also, the 16 months does not include the time taken to design the building and to receive all the necessary permits. It is not unusual for the design and build-out of the interiors to meet specific tenant needs to take just as long as construction of the building itself. NOAA intends to begin work with the project architect to include as much of the NWS needs as possible into the base building construction. This will provide NWS with the earliest possible occupancy date.

Question. On the financial side, NOAA estimates that $21,300,000 will be required for their share of the relocation costs through 1991. OMB has said it would allow only $10,300,000 in new money towards these costs.

Many think we are already cutting NOAA's programs more deeply than we should have. Is it now being implied that we dig into these programs by another $11,000,000?

Answer. The entire relocation costs are fully budgeted between GSA and NOAA. NOAA is not planning to absorb any money associated with the move. NOAA is requesting is $11,035,000 for FY 1989 through 1991. We have submitted a reprograming $1,650,000 in FY 1988 from deobligations. GSA has agreed to pay substantial costs in FY 1988 and FY 1989 as this is a forced move. The Administration will review funding requirements, if required, as the move progresses during the usual budget cycle.

Question. What do you think of a possible alternative of moving the National Marine Fisheries Service, the Office of Ocean and Atmospheric Research and the Washington Administrative Center to Building I instead of NOAA's senior management?

Answer. We believe that this plan can best meet the requirements of NOAA. Using Building 1 as indicated and Building 2 to house NWS will provide NOAA with 40% of the total space it needs and forms an integral package that can stand together while waiting for completion of Buildings 3 and 4. Other advantages included:

- o Move will result in the consolidation of three of NOAA's five line organizations and the NCASC administrative support office.
- o Concerns of possible prolonged delays in completing remaining buildings, of stranding NOAA management in Silver Spring, of budgetary constraints, and other project uncertainties will have been satisfied.
- o Building 2 is already under construction. There do not appear to be any obstacles that would jeopardize its completion to meet NOAA's requirements.
- o NWS special purpose space needs can be designed as an integral part of the overall building design, saving design time and construction costs.
- o Building 2, designed from the ground up to meet the needs of Grammax Building occupants, will be available for occupancy within 3 months of a redesigned Building 1. Essentially, no time is lost by using Building 2.
- o NWS and other organizations in the Grammax Building can remain together. NOAA will have solved its most pressing space problem - to find suitable new space for Grammax Building occupants.
- o NWS is the focus of many NOAA activities. Their location in Building 2 will give them a more central campus location.

Question. NOAA is requesting $3,201,000 in 1989 to occupy Building 2. Building 2 is still only a hole in the ground. When will Building 2 be ready for occupancy?

Answer. Construction of Building 2 started February 1988. By beginning interior design this year, NOAA can incorporate Grammax Building occupant needs as the building is being constructed. Under this accelerated schedule, NWS can begin occupying the completed building in January 1990.

REPROGRAMMINGS

Question. The Conference Agreement on the Continuing Resolution required across-the-board reductions of approximately 5.85 percent of all of NOAA's programs. Do you have a chart that displays the necessary reductions by program?

Answer. Yes. The following chart displays the reduction by program.

Program Subactivity	FY 1988 Conference	Reduction (5.85%)
Program Support		
Executive Direct & Administration	26,876	(1,697)
Central Administration Support	27,026	(1,580)
Retired Pay Commission Officers	5,019	(292)
Marine Services	62,543	(3,658)
Facilities	500	(29)
Aircraft Services	7,025	(408)
Total	128,989	(7,664)
National Ocean Service		
Mapping, Charting and Geodesy	45,672	(2,647)
Observation & Assessment	32,099	(1,802)
Coastal and Ocean Management	46,077	(2,694)
Total	123,848	(8,143)
National Marine Fisheries Service		
Information Collection & Analysis	105,825	(6,186)
Conservation and Management Operations	44,561	(2,628)
State and Industry Programs	21,692	(1,248)
Total	172,078	(10,062)
National Weather Service		
Operations and Research (Base Program)	272,831	(15,822)
(Congressional Restorations)	8,303	(486)
Systems Acquisition	71,296	(4,171)
Total	352,430	(20,479)
Oceanic & Atmospheric Research		
Climate and Air Quality Research	38,278	(2,163)
Atmospheric Programs	43,366	(2,539)
Ocean and Great Lakes Programs	68,311	(3,995)
Total	149,955	(8,697)
National Environmental Satellite, Data and Information Service		
Environmental Data Management Systems	22,735	(1,331)
Satellite Observing Systems	296,555	(17,505)
Total	319,290	(18,836)

Question. Our phones are busy with calls from anxious NOAA constituents about a further reprogramming. We know that NOAA proposed a reprogramming of $33,209,000 on February 4th. This reprogramming took savings in NEXRAD and Landsat, plus a further cut of 8 percent in the programs restored or added to the 1988 budget in order to avoid furloughs on the Weather and Satellite programs.

The Ranking Minority Member of the Committee, Senator Hatfield, has written to protest the further reduction of the assistance to the Columbia River Fish Hatcheries.

What is the current status of this reprogramming?

Answer. The reprogramming proposal is still under review within the Administration.

COASTAL ENERGY IMPACT FUND

Question. At the end of fiscal year 1989 there are expected to be loans outstanding amounting to $81,958,000 in the Coastal Energy Impact Fund. Most of these loans were made prior to 1981 and I would imagine, carry comparatively high interest rates.

Has any thought been given to selling these loans and liquidating this fund?

Answer. Consideration has been given to selling these loans and liquidating the Coastal Energy Impact Fund. However, there is a Congressionally mandated legal obligation of repayment assistance incorporated in each of these loans. therefore, the Department has determined that these loans are not marketable.

Question. How current are the loan repayments?

Answer. Generally, the loan payments are quite current. There are three or four loans that are delinquent and NOAA is currently working with the Office of Inspector General to resolve.

Question. What constitutes the $2,775,000 shown as accounts receivable for fiscal years 1987, 1988, and 1989?

Answer. The $2,775,000 amount shown is accrued, unbilled interest.

Question. As in past years, during fiscal 1989 it is planned to transfer $6,500,000 from the fund to help finance NOAA's general budget. That will still leave $6,606,000 in the fund.

Is there a particular reason why a balance has to be maintained?

Answer. The $6,606,000 is an estimate of earnings and collections projected for FY 1989. Since the amounts are only projections, the actual collections could be lower based on potential defaults and late payments.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

QUESTIONS SUBMITTED BY SENATOR INOUYE

Question. The only portion of the NOAA budget which has not suffered tremendous cuts is that designated for satellites. You say that you see NOAA as a "Science and Information Agency" and also as a Manager of our Ocean Resources. Do you see the ability of the agency to effectively manage our valuable ocean resources lessened by the current division of funds?

Answer. No, a manager needs information to be effective and satellite observations contribute to both oceanographic and atmospheric measurements. The idea is to see phenomena existing on a synoptic or large scale rather than looking at point measurements. This approach has helped oceanography tremendously over the past few years. A typical example has been our increased understanding of the El Nino phenomena and the southern oscillation activities. Detail measurements in place are important, but seeing some of these other effects take place, for example, sea surface temperature variations, on a regional or synoptic scale, has been a tremendous advantage to those studying both climate and oceanography.

There can be nothing more important for us than to try to link the interactions or the oceans with the atmosphere. We have tried to do that in the most effective way by both satellite observations, in place observation and attempting to enhance cooperative, international oceanic observation on a world-wide scale.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

QUESTIONS SUBMITTED BY SENATOR BUMPERS

STUTTGART FISH FARMING EXPERIMENTAL STATION

Question. I understand that NOAA has proposed to terminate National Marine Fisheries Service aquaculture research at Stuttgart, Arkansas. I just want to serve notice that I will work to keep that program going till we have an Administration that understands the importance of catfish farming to Arkansas and other southern states.

I understand that there is a reprogramming request now pending at OMB that would transfer $7.977% of the construction funds appropriated last year for the Stuttgart facility, about $75,000. Can you outline for me, the reprogramming request?

Answer. In the FY 1989 appropriation, Congress directed an across-the-board reduction of 5.85% for all NOAA programs, while permitting reprogramming to be proposed where critical program areas would be significantly impacted by this reduction. NOAA identified several critical programs which the directed reduction would significantly impact. Sheltering these programs would require additional reductions to be made in other programs. A reprogramming request would be one option for mitigating these impacts. The Stuttgart facility funds will be subject to the across-the-board reduction and may, along with most other NOAA programs, be subject to a further assessment if a reprogramming request were presented to Congress.

NEXRAD DEPLOYMENT

Question. I understand that the first production line NEXRAD doppler radars will be installed around the country in FY 1989. Last year, in response to questioning by our distinguished Chairman, Senator Hollings, the first 10 units planned for deployment were outlined. The list is printed in the hearing record from last year.

Also during these hearings last year, I brought to Dr. Calio's (NOAA Administrator) attention the problems that we've encountered forecasting storms approaching the Fort Smith, Arkansas area from the northwest. We talked at that time about relocating the Fort Smith NWS facility. It was determined, through the questioning and subsequent correspondence, that perhaps the best way to alleviate the forecasting problem at Fort Smith was through the early deployment of NEXRAD. I understand the NEXRAD facilities at Tulsa, Oklahoma and Little Rock will address the forecasting problem at Fort Smith.

Reviewing the NEXRAD deployment list, I note that Tulsa is planned for early deployment, but Little Rock is not.

Noting the documented need for improved forecasting at Fort Smith, when will the Little Rock NEXRAD unit be deployed? What is the potential for early deployment of that unit in order to fully address the problem at Fort Smith.

Answer. Under the current delivery schedule, NEXRAD will be installed at Tulsa in June 1991. This site is very well situated to provide improved warning capabilities for severe weather approaching Fort Smith from the northwest sector, one of Fort Smith's specific concerns. The NEXRAD unit at Little Rock will be installed in April 1992. It too will provide Doppler radar coverage for Fort Smith, well within its effective range.

Although there are no plans at this time to reschedule these delivery dates, existing services at Fort Smith will be neither terminated nor reduced until the Tulsa and Little Rock NEXRAD systems are fully deployed and full coverage for the Fort Smith area is satisfactorily validated.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

QUESTIONS SUBMITTED BY SENATOR CHILES

Question. The Southeastern United States has weather patterns substantially different from other regions of the country. Florida's marine subtropical environment is also unique within the region: its lightning rate, for example, is four times that of any other state. What efforts are currently taking place to study the unique forcing and initiating mechanisms for storms in the Southeastern United States?

Answer. A variety of efforts are underway to examine storm characteristics in the southeastern United States. The two major efforts in which NOAA is involved are (1) the Gulf of Mexico Experiment (GULFMEX) and (2) planning for the Florida Area Mesoscale Experiment (FAME). The objective of GULFMEX, planned for 1988, is to investigate the transformation and transport of Gulf air masses which contribute to severe storms in the U.S. The objective of FAME, planned for 1990, is to study the initiation, life cycle, and prediction of deep convection in Central Florida.

Recently, NOAA was an active participant in Genesis of Atlantic Lows Experiment (GALE) conducted by a combination of organizations from government, industry, and universities, to study the formation and evolution of significant East Coast storms.

NOAA Environmental Research Laboratories (ERL) have been conducting extensive studies of storm electricity and morphology and have been developing a lightning climatology for Florida in cooperation with NASA Kennedy Space Center. ERL, in collaboration with the National Hurricane Center, also conducts major research on hurricanes and tropical storms, including landfalling storms in the southeastern U.S.

In addition, the National Weather Service (NWS) has been evaluating lightning data from local and regional lightning detection networks over the southeastern U.S., particularly in Florida. The NWS Forecast Office in Miami is currently assessing lightning information as it compares to radar observations and other data during severe storms. The NWS, along with other Federal agencies, is also engaged in a national experiment dealing with lightning data from a variety of detection networks, including one covering the southeastern U.S.

Question. I understand that the Raytheon prototype NEXRAD system, currently located in Massachusetts, is tentatively planned to be relocated at the National Center for Atmospheric Research in Boulder, Colorado. Considering the substantial amount of data into regional weather patterns already developed at the site, and other established locations suggested by agencies involved in NEXRAD development, has the National Weather Service considered other sites which would provide more research opportunities and benefits?

Answer. High resolution Doppler weather radar data has been collected for only a limited period of time at a small number of locations in the United States. The Boulder, Colorado, area is one of those few areas. Until operational NEXRAD units start to become available in 1990, the Raytheon prototype system is needed for a number of high priority tasks in the Boulder area.

Proximity to the Program for Regional Observing and Forecasting Services (PROFS) in the Denver area is required to provide NEXRAD data and products to PROFS for integration with satellite, surface observation, and central guidance data.

The Raytheon prototype will also be used by the Federal Aviation Administration to develop, evaluate, and refine algorithms and procedures for detecting downbursts and microbursts which present serious hazards to aviation in the area immediately surrounding an airport. Frequency of occurrence of microbursts is relatively high in the Denver area, making it a good choice for planned efforts.

While both of the above tasks require location of the Raytheon prototype in the Denver, Colorado, area, the National Weather Service also recognizes the continuing value of the Doppler radar system as a weather research tool. The planned transfer of the system to the National Center for Atmospheric Research under the auspices of the University Consortium for Atmospheric Research and the National Science Foundation will simplify and ensure access by all academic and other organizations that have a need for Doppler weather radar data.

Question. Should a center utilizing this prototype system be established, in cooperation with the ongoing meteorology program at Florida State University? Potential for research and training are enormous. Florida State has an outstanding program, which I also understand to be the only full meteorology program among Southeastern universities. Has the National Weather Service specifically considered establishment of a center for atmospheric research in the Southeastern United States?

Answer. NOAA recognizes the outstanding education and research program at Florida State University (FSU) and has enjoyed close cooperation with FSU for many years. Many NOAA employees have received formal education at FSU, and important collaborative research activities are conducted regularly.

While the National Weather Service, as such, does not establish or operate atmospheric research centers, one of NOAA's Environmental Research Laboratories, the Atlantic Oceanographic and Meteorological Laboratory (AOML), is located in Miami. This Laboratory has focused considerable effort on research directed toward understanding the marine subtropical environment, often in collaboration with FSU.

In addition, the National Weather Service does operate the National Hurricane Center (NHC) in Miami, in close proximity with the Hurricane Research Division of AOML. The NHC specializes in the analysis and prediction of hazardous tropical and substropical weather phenomena.

Question. Loss of Titan II rocket to lightning following launch from the Kennedy Space Center was a tremendous blow to our space program. I understand that the second operational NEXRAD system will be located at Melbourne, Florida, and will serve as a terminal weather radar for the Kennedy Space Center. But I also understand that algorithms appropriate to that environment have not yet been developed. Would locating the Raytheon NEXRAD prototype in Florida allow development of algorithms which would make the Kennedy facility more quickly operational, and facilitate continued research advantageous to the nation's space program?

Answer. The National Weather Service (NWS) and the Air Weather Service in the Department of Defense both recognize the critical need for the best possible weather information during launch operations at the Kennedy Space Center. For that reason, both agencies have given very high priority to early installation of a NEXRAD system near Cape Canaveral to support launch operations. The second delivery of a planned 175-unit production run is assigned to that site.

A common set of meteorological algorithms is being developed for use on all NEXRAD systems. The NWS foresaw the possibility that sites in different geographic regions and even different seasons of the year at the same site might require different optimization factors in some or all of the algorithms. Therefore, a provision was incorporated in the NEXRAD design to change all algorithms' coefficients and parameters which might require modification to accommodate differences in weather characteristics resulting from geographical or seasonal variations. Because the changeable coefficients and parameters are easily accessible through "look-up tables," changes within pre-defined ranges can be made in a simple but controlled way at each site.

In addition, the NWS is collecting data in the Tampa, Florida, area using versions of some of the NEXRAD algorithms used in the Radar Data Processor (RADAP) and Interactive Color RAdar Display (ICRAD) programs. These data will be used to define optimum algorithm coefficient values or valid ranges of values for different weather conditions and seasons. Data from these and a small number of similar investigations in other areas of the United States will be used in the NEXRAD program to set initial values for these variables. Refinement of values will be an ongoing effort for several years during and following deployment of the NEXRAD system. The NWS intends to make NEXRAD data available to all interested research organizations. In Florida, NWS is cooperating with Florida State University in their tropical severe weather studies and will make radar data available in support of these ongoing efforts.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

QUESTIONS SUBMITTED BY SENATOR LAUTENBERG

DOLPHIN STRANDINGS

Question. Last summer, a number of whales and dolphins beached themselves in Atlantic Ocean coastal waters.

A) What did you do to try and determine the cause of these strandings?

B) How much did these efforts cost?

C) What caused the strandings?

D) What are you planning to do in FY 88 and how much will you spend?

E) Does your FY 89 proposal include funding to understand the cause of these strandings?

Answer. A) NOAA participated in an interagency Dolphin Response Team effort located in Virginia Beach, VA. Other participants of the team were representatives of the Animal and Plant Health Inspection Service (APHIS,USDA), National Museum of Natural History Smithsonian Institution, Environmental Protection Agency (EPA), and the University of Guelph Canada Marine Mammal Commission. Field teams autopsied dead animals as they were recovered, and captured 20 live wild animals for blood samples (several of these animals showed signs of the disease). Each recovered animal was examined for evidence of pollution, toxicology, biotoxins, virology, bacteriology and pathology which may have accounted for the animals death. An offshore aerial survey to address the population size of dolphins in the mid-Atlantic region in August 1987, was followed up with additional coastal aerial surveys extending from nothern New Jersey to northern Florida approximately every 30 days through March 1988. The southern migration of the dolphins lead to the spread of the disease as far south as Central Florida. As of April 1, 1988, the deaths of 745 bottlenose dolphins (Tursiops truncatus) found stranded are attributed to the epidemic. Presently, we have no estimate of the actual number of animals that have died from this epidemic whose bodies were not recovered.

B) Approximately $200,000 has been allocated to address the strandings of dolphins on the East coast. Expenditures of other agencies are not known.

C) The pathology of the disease is not known at this time, but it has been established that the immediate cause of death is a systemic bacterial septicemia involving several relatively common bacteria found in the marine environment. The current hypothesis is that some agent (or agents) is causing a failure of dolphin's immune system which allows the ambient bacteria to infect the animal. Human-immunodeficiency virus (HIV) has tested negative.

D) NOAA will continue to analyze the tissue samples gathered in an effort to understand the cause(s) for the strandings. Another plan under consideration would include support for additional field teams in the event that the epidemic continues during the northern migration of the dolphins during the spring and summer of 1988. Preliminary estimates indicate that this would cost up to $40,000.

E) Work for the conservation and protection of marine mammals will continue to be conducted under the resource information base program funding. Protected species research will include studies of abundance, distribution, migration and bioprofiles of marine mammals. East coast dolphins are included in this program.

OCEAN POLLUTION

Question. Why is NOAA proposing to reduce its budget for coastal and estuarine assessment by $5.6 million during a time when your own marine pollution monitoring is showing significant problems in coastal areas?

Answer. The justification for the reduction is simply that a judgment had to be made among competing programs and requirements, and other uses of funds were given higher priority. Furthermore, only those programs with a clearly defined national scope are proposed for continuation; programs which will benefit geographic areas or special interests will be discontinued. Some of NOAA's important ocean and coastal assessment efforts will be continued including: (1) the analysis of sediment and biological samples that have been collected through 1988 from selected sites of the National Status and Trends Program; (2) Strategic Assessment Program; and (3) activities related to hazardous spill response.

Question. With the elimination of the Status and Trends Program, how will NOAA be able to fulfill its responsibilities under the Marine Protection, Research and Sanctuaries Act and the National Ocean Pollution Planning Act?

Answer. NOAA's efforts under the Marine Protection, Research, and Sanctuaries Act and the National Ocean Pollution Planning Act will continue at a reduced level. Estuarine and Coastal Assessment Program activities that will be continued with the remaining funds include: (1) the analysis of sediment and biological samples that have been collected through 1988 from selected sites of the National Status and Trends Program; (2) Strategic Assessment Program; and (3) activities related to hazardous spill response.

Question. In your opinion what are the major problems causing coastal and marine pollution off the coast of New Jersey?

Answer. The major problems of toxic chemical and nutrient over-enrichment in New Jersey coastal waters come from runoff from urban and agricultural non-point sources. Municipal and industrial point source discharges, although controlled under effluent guidelines, also continue to contribute significantly to these problems.

Question. Section 203 of the Marine Plastic Pollution Research and Control Act of 1987 requires NOAA to submit a report by September 30, 1988 on the effects of plastic on the marine environment.

A) What is your plan to comply with this requirement?

B) How much will you spend to prepare this report in FY 88?

C) What are you proposing to do on the problem of plastic pollution in the oceans in FY 89 and how much will you spend?

Answer. A) NOAA currently chairs the Interagency Task Force on Persistent Marine Debris. The Task Force report is due to the Domestic Policy Council by the end of April 1988. It will summarize available data on the effects of plastic in the marine environment. NOAA will augment the Task Force report with additional information that may become available before September 30.

B) The report will be based on research that NOAA, other federal agencies, and others have conducted over the past 6 to 8 years.

C) NOAA will continue research on plastic pollution including activities related to the possibility of increased mortality of living marine resources in open ocean areas of the Pacific through loose resources.

Question. This Act also requires NOAA to initiate plastic pollution outreach and citizen pollution patrol programs by April 1, 1988.

Please describe your program and associated funding levels for complying with these requirements.

Answer. Every year since 1985 NOAA has committed money and personnel to its educational outreach efforts aimed at informing a wide range of groups about the effects of plastic debris in the ocean.

Three NOAA offices - the National Marine Fisheries Service Marine Entanglement Program, the Sea Grant Marine Advisory Service, and the Office of Public Affairs -- are actively involved in public awareness on this issue. In FY 1988 these three programs will spend between $300,000 and $350,000 on public education.

In cooperation with NOAA, the Center for Environmental Education and the Society for the Plastics Industry produced a series of three public service announcements for placement in the magazines, and three brochures. The PSAs have already appeared in all of the most widely circulated fishing and plastics trade publications in the U.S., and have generated supportive editorials. A second series of PSAs, aimed at recreational fishermen, and a poster, are planned for production later this year.

Last spring NOAA produced, as part of its continuing "Sea and Air" radio program, a five-part show on plastic marine debris. The program is distributed to about 600 radio stations across the country. A second radio program, produced through the Commerce Department's "A Growing Nation" series, was distributed in early April.

NOAA also produced a public education video show on marine debris. The show, incorporating film, music and narration, is being distributed nationally by a film distribution company.

We have been sponsors of or actively participated in important conferences addressing the problems of plastic debris. Last October we participated in an internationally attended meeting held in Hawaii for the commercial fishing industry. And earlier this year, NOAA sponsored a conference in Oregon attended by representatives from state and federal government and from the commercial fishing industry.

Since January we have held several meetings with representatives from the Interior Department, EPA, and the Advertising Council to coordinate educational activities planned for the coming year. In addition, we have met with Center for Environmental Education and the Society for the Plastics Industry to explore ways of expanding the public eduction program using the broadcast media.

Finally, NOAA continues to provide speakers nationwide at schools, conferences, and other meetings across the U.S.

RIGHT WHALE RESEARCH

Question. A) What is the status of your Atlantic Coast right whale research program?

B) What have you learned about right whales from this program?

C) Why are you proposing to eliminate the program?

D) What is the population of the Atlantic right whale stock?

E) Do you have any other programs which specifically address Atlantic right whales?

Answer: A). The right whale research program initiated in September 1986 primarily involves research contracts with a consortium of research organizations through a Cooperative Agreement to the University of Rhode Island and the University of Miami. The FY-86 and FY-87 funding levels were $381,000 and $243,000 respectively. The overall goal of this research is to detect changes and causes of changes in the North Atlantic right whale population distribution and size. The research is comprised of four tasks: Shipboard Surveys, Aerial Surveys, Dec base development and data analysis. Funds are available in 1988 for this study.

B) Studies being conducted under the cooperative agreement have documented high-use habitats, mortalities, seasonal distribution patterns and ranges, calving rates, and areas of concern due to anthropogenic interactions.

Photo identification data are being used to document residencey times in different regions, conflicts with fishing gear, vessels, and killer whales, and in population demographic studies.

Overall, we are learning about right whale habitat requirements and usage, potential anthropogenic threats, current calving rates and age at maturity, seasonal distribution and local abundance, feeding strategies, and social interactions.

The research program is aimed in the long-term at being able to identify changes in the abundance of right whales so that the recovery of this population can be assured.

C) The National Marine Fisheries Service will continue right whale research under base program funding for resource information, Protected Species research. The $250,000 in FY 1987 and the $235,000 in FY 1988 were provided to study the number of Atlantic Coast right whales in coordination with the University of Rhode Island and will not be required in FY 1989.

D) Current population estimates for the North Atlantic right whales range from 200-400 animals, which are based on line transect survey data or mark-recapture analysis using individual photo identifications. The New England Aquarium has photographs of 240, individually identified whales in the right whale catalogue.

E) The research program described above is the only research program presently being conducted by the NMFS which specifically addresses Atlantic right whales.

SANDY HOOK NATIONAL MARINE FISHERIES LAB

Question. A) What is the status of efforts to restore the lab?

B) Will proposed budget cuts affect operations at the Sandy Hook facility?

Answer: A) Emergency and/or short-term facilities and equipment to continue collecting valuable time-series data and conducting priority lab studies have been provided. Four trailers slated for behavioral experiments were functional at the end of December 1986. Two others are also being converted. Negotiations are underway with the State of New Jersey and the National Park Service to build a new facility to house the Sandy Hook operation.

B) Yes. Proposed budget reductions will affect lower priority habitat and related research activities at the Sandy Hook facility. The proposed program reductions have no relationship to restoration efforts at the laboratory.

MARINE RECREATIONAL FISHING LICENSE FEE

Question. A) Does NOAA propose to impose licensing fees for marine recreational fishing?

B) If so, how does this proposal differ from that of previous years?

C) Has the Agency conducted a review of financial impact of such a proposal on the commercial recreational fishing industry?

Answer. A) Yes. In a revised draft bill being reviewed by staff, individual fees would be required for commercial and recreational fishermen aboard fishing vessels operating in the EEZ. This will not apply to persons fishing in state waters.

B) The previous proposal submitted by the Administration required individuals to pay license fees when fishing in the 0 - 200 mile zone (state waters and Federal waters). The current proposal would apply only to Federal waters. If an individual fishes only in state waters and does not enter the EEZ, then no license fee would be required.

Under the HR 3341 proposal (a bill introduced by Don Young R-AK), recreational anglers (between the ages of 16 to 64), and charterboat operators and their crews fishing in EEZ, needed a license. Commercial fishermen did not need a license, but had to pay fisheries research fees.

C) NOAA has conducted a brief review of the financial impact of marine fishing user fees. The impact would depend on the level of fees. This issue is still being examined by NOAA and a number of options are being considered.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

QUESTIONS SUBMITTED BY SENATOR RUDMAN

REPROGRAMMING

Question. NOAA has a reprogramming proposal pending at OMB to accommodate the across-the-board reduction of $70 million imposed in the continuing resolution as part of the budget summit agreement. I understand NOAA is partially absorbing this reduction by a 5.8% across-the-board cut throughout the agency. In addition, NOAA is proposing another 8% cut for the programs restored or enhanced by the Congress.

A. Why is NOAA making this proposal rather than simply taking the reduction across-the-board?

B. What is the status of this reprogramming request?

C. If it comes to the Congress in its current form, and we reject that portion of the reprogramming imposing additional cuts on restored programs, what impact would it have on NOAA operations?

Answer. A) NOAA has taken the 5.85% reduction across-the-board. However, to do this may require furloughs in some programs. The reprogramming request is to permit us to do our highest priority programs and prevent possible furloughs.

B) The reprogramming proposal is under review in the Administration.

C) Furloughs or other non-personnel reductions would be implemented proportionally to the amount of the approved reprogrammings; however, programs supporting public safety such as the Weather Service would be given priority.

MARINE MAMMALS

Question. Dr. Evans, you're a former Chairman of the Marine Mammal Commission, so I know you understand the need to continue research on and protection of marine mammals. However, once again the NOAA budget is proposing the virtual elimination of funding for marine mammal and protected species research. Don't you think its important we continue our efforts in this area?

Answer. Yes, I think that it is important to continue research programs for protected species and marine mammals. The $3.647 million decrease for protected species and marine mammal research is appropriate given the current Federal budget deficit. The remaining $3.705 million will allow high priority research to continue and lower priority research will be discontinued. For example, we have completed our studies to develop a prototype turtle excluder trawl. Base funding will allow us to support gear entanglement studies and high priority monk seal research. Funding for right whale research was provided in FY 1987 and FY 1988 and will not be required in FY 1989.

WEATHER SERVICE MODERNIZATION

Question. The National Weather Service modernization program consists of three elements; the Next Generation Weather Radar, or NEXRAD; the Automated Surface Observations System, or ASOS; and the Advanced Weather Interactive Processing System, or AWIPS. The Administration has decided not to continue development of AWIPS. How are all three systems supposed to interact, and what will be the operational impact of terminating the AWIPS program?

Answer. The modern radar (NEXRAD) and automated surface observing systems (ASOS) will provide critical observational information of unprecedented quality and quantity that is needed to define weather phenomena and their evolution. In addition, these powerful systems will accomplish significant data processing functions and automate many time-consuming manual tasks.

AWIPS is a concept for an AFOS follow on, not a defined system. The Administration continues to pursue this follow on system. NWS plans to identify cost-effective alternatives to AFOS, the current information processing and communications system. Therefore, no detrimental operational impact will result.

Question. The new generation of geostationary weather satellites, due to become operational in 1990, were designed to take advantage of the AWIPS system. What impact will the termination of AWIPS have on the operation of these satellites?

Answer. The new generation of geostationary weather satellites is designed to relieve many of the limitations of current satellites, resulting in improved data quality as well as increased spatial resolution, more measurement channels, and better timeliness. The AFOS follow on system, being pursued by the Administration, will accommodate the GOES design.

Question. The National Weather Services modernization program will not be cheap; if AWIPS is included, the three systems will end up costing approximately $800 million. A) Will this increase in automation result in a decrease in personnel, and a decrease in the number of weather stations that need to be maintained? B) Do you have a plan in this regard? If so, please provide it to the Committee for the record. Also, if different, supply a copy of the National Weather Service restructuring proposal that was rejected by the Office of Management and Budget.

Answer. A) The modernization of the National Weather Service (NWS) is much more than an automation program. Before personnel and weather station location implications can be addressed, the broader rationale for the modernization must be understood for perspective. The significant investments in new technology for NWS are justified for three reasons.

First, the technologies now in use by NWS for atmospheric observations, information processing, and telecommunications are becoming obsolete, liable, difficult to maintain, and labor intensive to operate.

Second, scientific and technological advances over the last decade now make possible major improvements in fulfillment of the basic NWS mission of providing effective severe weather and flood warnings to the public. In the modernized NWS of the 1990's, forecasters will actually predict the development of severe weather disturbances and issue warnings with extended lead time and better geographical accuracy. The current NWS warning program is based upon detection of severe weather events once they have already begun. Lead times as a basis for protective reaction are now typically several minutes at best for most tornadoes. In 1986, approximately one third of severe weather events were not covered by NWS warnings.

The primary technological tools that will enable warning service improvements involve better observation and tracking data for atmospheric characteristics on the scale that destructive storms occur. These systems are Next Generation Weather Radar, Automated Surface Observing Systems, and the Next Generation Geostationary Satellites. In turn, the greatly expanded set of weather data from the new systems must be provided quickly to the forecaster to analyze dangerous weather patterns as a basis for timely public warning. The new NWS information processing and telecommunication system being pursued by the Administration will have a goal of improving the lead time for weather and flood warnings.

The third justification for modernization is cost savings avoidance. A carefully designed "package" of new NWS technologies can provide substantial improvements in the NWS warning and forecast programs, based upon a vastly increased data base. Also, automation of current manual tasks may result in opporunities for personnel savings. NWS plans to further evaluate the opportunity for such savings in light of the entire modernization effort.

With respect to the number and locations of future weather stations, the ten-year experience of NOAA with weather prediction research has provided a basis for evaluating field station configurations for the future. This research has indicated that there are tradeoffs in the location and size of future NWS offices to utilize the new technologies. For example, tests at Oklahoma City have indicated a strong relationship between the proximity of a weather office and the quality of warning services. NWS is currently reviewing the personnel staffing and weather station configuration tradeoffs that will balance improved effectiveness of the NWS warning services with the need to obtain the most cost-effective operations. These technical studies have not been completed. Personnel efficiencies and consolidation of operational warning and forecast stations will be feasible in the future.

B) The National Oceanic and Atmospheric Administration does not have a final plan for the modernization of the NWS at this time. Technical studies are underway and various tradeoffs are being evaluated to obtain the most cost-effective approach to increased weather and flood warning service effectiveness. Technical studies related to the NWS modernization are currently under internal review within the Executive Branch.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

QUESTION SUBMITTED BY SENATOR STEVENS

Question. The Pacific Fishery Management Council has announced that recent cuts in funding for PACFIN and similar fishery monitoring programs in FY 88 will force it to consider restrictive management measure applicable to the fisheries this Spring. It has also indicated that the proposed cuts for FY 89 will cause further restrictions. What is the situation for FY 88? Will NOAA approve restrictive measures for this Spring? Do you agree that cuts in PACFIN and similar programs will require more restrictive management measures unless non-federal funding for those programs is secured? Do you expect such funding to be secured in the near future so as to avoid the need for restrictive measures?

Answer. Additional FY 1988 funding for NMFS programs contingent upon passage of the marine fishing user fee proposal included $3 million to fund PacFIN. However, Congress did not enact the fishing user fee legislation before the 1988 Appropriation was enacted. Support for PacFIN was made available in FY 88 and prior years by temporarily redirecting from $700,000 to $900,000 per year in program funds from other West Coast programs during the last few years. The FY 88 legislation also called for an across-the-board 5.85% reduction which included the funds being used to support PacFIN. In FY 88 NMFS provided $586,000 for funding PacFin.

Maintenance of the in-season management capability may be reduced due to the funding available for the collection of adequate "near-real-time" data for FY 88. However, every effort will be made to ensure smoother program management. Any regulations submitted by the Council will be given a thorough review.

The possible absence of real time data to support in-season management may result in restrictive management measures being considered to insure conservation of the resource and avoid the potential for a reduction in future year quotas.

Pacific Coast States and Industry sectors which benefit from the PacFIN program will need to assess its value and provide additional funding or services to support PacFIN as appropriate to preclude the need for restrictive management measures. The availability of any additional non-federal funding for PacFIN is not known at this time.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

QUESTIONS SUBMITTED BY SENATOR WEICKER

WEATHER SERVICE & SATELLITE LONG RANGE PLANNING & AGENCY PRIORITIES

Question. What is NOAA's strategic plan for the next five, or for that matter, ten years for its satellite and core ocean and coastal programs? Is there even such a plan, or are we just blindly accepting decisions made years ago about future satellite procurement?

Answer. Within the framework of the Department of Commerce's strategic planning process, the long-term approach to improve the effectiveness of NOAA's coastal and oceanic atmospheric services is established as a Departmental goal. With respect to satellite progams, the long-term meteorological requirements for satellites are established by the National Weather Service in cooperation with other Federal meteorological agencies, including the Department of Defense. Throughout this process, NOAA's National Environmental Satellite, Data and Information Service works closely with the National Aeronautics and Space Administration to seek the most cost-effective approach to fulfill requirements. This arrangement is a continuing one which has worked quite well in the very complex arena of satellite development and procurement.

Similarly, planning for ocean and coastal programs has been undertaken within the Department of Commerce's strategic planning framework. More effective service delivery and the definition of the appropriate Federal, State and local roles in ocean and coastal management are primary goals in this process. NOAA has recently accelerated efforts to examine the long-term opportunities for improvements in ocean and coastal programs.

REPROGRAMMING REQUEST

Question. We are being told that should Congress deny the request for reprogramming of FY88 funds there would have to be significant furloughs and/or Reductions in Force (RIFs) throughout the agency.

A. Could you please provide for the record a detailed accounting of the number of employees, by line office, that would have to be furloughed and/or RIFED under the following two scenarios: a) denial of the entire reprogramming request, and b) acceptance of the $17.284 million portion of the request and denial of the $15.925 million portion representing the 7.977% across the board reduction in Congressional restorations and enhancements?

Answer. NOAA feels that it can not maintain current staff levels and incur the non-personnel costs needed to maintain all programs mandated or authorized by Congress. NOAA considers furloughs to be less disruptive to ongoing programs than further reductions in non-personnel costs.

	Without Reprogramming		Partial Relief Denial of $15.925M	
Line Office	Affected Employees	Days Furloughed	Affected Employees	Days Furloughed
NESDIS	403	20	403	9.6
NOS	434	22	434	10.5
NWS	4,800	23	4,800	11.0
OAR	920	6.5	920	3.1
TOTAL	6,557		6,557	

All line offices will be impacted by the across the board reduction.

LONG ISLAND SOUND STUDIES

Question. I am delighted to see that the proposed budget continues funding for advanced circulation studies in Long Island Sound. As I'm sure you know, a good circulation model is going to be extremely important to the joint EPA, NOAA, Connecticut, and New York Long Island Sound Study in their preparation of recommendations for the Sound. NOAA's Status and Trends work in the Sound has also provided valuable information to the Study.

A) Could you tell me what level of financial support NOAA intends to provide for efforts connected to the Long Island Sound Study in FY89, and what the breakdown will be for circulation versus biological studies?

Answer. A) The Administration's FY 1989 Budget Estimates, as submitted to the Congress, include a proposal to delete funding for the Long Island Sound Study (LISS), on the basis that the LISS is a specific State concern that should be funded by State government.

NOAA FLEET

Question. The President's budget is proposing to lay up six vessels and reduce the days at sea for an additional seven "pending completion of the (Marine Board's) fisheries charter study." Since this study has not yet been released, it would seem a bit difficult to justify taking this action.

A) When will the study be released, and should that study not support the actions you propose, where would the funds come from to continue full operation of the fleet?

B) Assuming that the study does support the economics of chartering rather than operating NOAA owned vessels, is it justifiable to reduce funding in the Marine Services account without making some attempt to compensate the accounts of those programs which would have to provide the charter costs out of their science budgets?

Answer. A) The Marine Board study is scheduled for completion in April 1988. The President's budget includes the number of days-at-sea deemed necessary to support NOAA programs. Based on the Marine Board study, the mix of how these days-at-sea are delivered, i.e., charter of NOAA fleet, may be changed. The total number of days-at-sea will not be increased.

B) If the Marine Board study shows that chartering is more cost effective than operating NOAA vessels, some of the proposed active NOAA vessels would be deactivated and their operating funds used for chartering.

TERMINATION OF COASTAL ZONE MANAGEMENT AND SEA GRANT

Question. In the spring of 1986, the President signed a bill reauthorizing the Coastal Zone Management program throug FY90. Part of the negotiations surrounding passage of that bill included agreement by the states to accept the responsibility for providing a higher share of the grants in return for a promise of stable federal funding. The President also signed a bill this December reauthorizing the Sea Grant program through FY90.

A) I realize that the Administration does not consider these programs to be high national priorities, but could you please explain how terminating them is consistent with having recently signed the bills to reauthorize them?

Answer. A) The Administration continues to recognize the national importance of effectively managing and protecting coastal resources. The CZMA was reauthorized in order to provide Federal financial assistance to assure that the national interest is met and state programs remain approvable. Since enactment of the Coastal Zone Management Act, the CZM Program has provided more than $600 million in grants to twenty-nine states and territories for the development and implementation of their programs, resulting in over 90 percent of the coastline being protected. Therefore, the Administration believes that the role of the Federal government, regarding its funding obligation to coastal states and territories for program development and implementation, has been met.

CORAL BLEACHINGS

Question. As you may know, this Subcommittee held a hearing in November, 1987 on a most disturbing occurrence in the Caribbean. For some reason, corals throughout the Caribbean were expelling the microorganisms (zooxanthellae) which give them their characteristic color. The effect of this expulsion is that the corals lose their color, appearing bleached. Bleaching is considered to be a sign of environmental stress on the corals, and if it persists can result in mortality of the corals.

It was apparent from the hearing that there was rather poor coordination both within NOAA, and between NOAA and the other science agencies, on this problem, and in fact on all of their efforts in the Caribbean region. It was even pointed out that there is no coordination of even the simplest oceanographic measurements, such as temperature and salinity.

A) Has NOAA taken any action since the November hearing to improve the research coordination carried out under its control in the Caribbean basin?

B) Has the agency committed any funds to supporting the short-term study of th 1987 bleaching event, and does it have any plans to establish the type of long-term monitoring programs which might provide us with answers to such problems as the bleaching event and the dolphin deaths should they occur in the future?

Answer.

A) Yes. NOAA is improving coordination of its research activities in the Caribbean through existing institutions such as the Association of Island Marine Laboratories (AIML). Groups such as this are being employed by NOAA to assist with the development of integrated research programs to improve management of coral reef systems and to develop new fisheries.

B) In December 1987, NOAA organized and supported a workshop to examine the coral bleaching event, suggest hypotheses to explain the bleaching, and to develop a protocol for gathering information to document the event and support or reject the hypotheses. The final report of the workshop is expected shortly and will recommend possible courses of action to respond to and document general processes and phenomena (such as bleaching) which are regional in nature.

TERMINATION OF NURP

Question. As you can imagine, I have noticed that NURP is once again slated for termination. I find this especially ironic in light of the long awaited publication of NOAA's own document entitled "New Directions for NOAA's Undersea Research Program." One of the report's recommendations reads, and I quote, "NOAA should assume responsibility for developing and implementing a focused National Undersea Science Program to address research questions in the third dimension."

Can you please explain how terminating the program altogether is consistent with this recommendation contained in NOAA's very own report?

Answer. The report referred to is not "NOAA's own report" but a study performed by an outside contractor. As such it reflects only the contractor's opinions. NOAA has never endorsed the findings of this report. NOAA continues to believe that NURP research is not central to NOAA's basic mission, but are largely of state and regional concern. Accordingly, they should be funded from private and state resources or by other Federal agencies for whom this research is mission related.

Question. Another of the report's recommendations reads "NOAA should continue to operate the manned habitat component of the current Undersea Research Program and seek ways to increase the scientific usefulness of the facility by taking advantage of its mobility." I'm sure you are aware of the fact that NOAA has dedicated significant resources to the outfitting and launch of the new habitat Aquarius, which was launched this fall in St. Croix.

In terminating NURP do you propose to simply abandon this tremendously useful research tool just as it is coming on line?

Answer. NOAA plans to make every effort to transfer the AQUARIUS habitat to a research institution which is capable of using and supporting this research tool.

NURP'S RELATIONSHIP TO SEA GRANT

Question. In my questions to Dr. Calio during the budget hearing a year ago, I asked whether or not the agency had pursued the request of the Senate Appropriations Committee in its FY87 report language to look into the relationship between Sea Grant and the Office of Undersea Research. Last year's response was that "the Administrator is currently reviewing the efficiency of this arrangement and the possibility of other options, especially in light of the anticipated appointment of a Chief Scientist, but I still haven't heard anything about the agency' review of this situation.

A. Now that Dr. Peterson has been confirmed, can I expect to hear from you about the question of where NURP should best be located within NOAA?

Answer. Our 6-year experience of organizing NOAA's Office of Oceanic and Atmospheric Research into three line management structures has proven this arrangement to be efficient. The grouping of our university-based marine research programs (National Sea Grant College Program, National Undersea Research, and the National Coastal Resources R&D Institute) as one of these three elements has worked particularly well and there is no compelling reason to change it. The salient benefits of this arrangement are the sharing of common support and data bases, easing coordination among our university researchers, and providing NOAA a central focus for intellectual partnership with the academic community. The recent review of research activities held at the University of Connecticut showed how NOAA marine activities supported by NURP, Sea Grant, and the NOAA laboratories, as well as those funded by non-NOAA sources, have been blended together under the current management arrangements.

WEATHER SERVICE EQUIPMENT MODERNIZATION

Question. In a Washington Post article dated March 14, 1988 questions about your plans for equipment modernization were raised. The picture they painted was one of frighteningly outdated equipment being used to forecast major storms. They discussed the ongoing acquisition of next generation radar (NEXRAD) units, and the simultaneous cut in funding of almost $15 million for the Advanced Weather Interactive Processing System (AWIPS) which would allow the data from those radar units to be used. As I mentioned in my opening statement, I am concerned that the near termination of funding for AWIPS, as well as the discontinuation of NOAA-Port raises serious questions about the ability to use the information coming out of the sophisticated new observation instruments we are installing.

A. Could you please discuss how the data from different systems such as polar orbiting and geostationary satellites, NEXRAD, and ASOS is going to be utilized by the Weather Service without NOAA-Port and AWIPS?

Answer. AWIPS is a concept for an AFOS follow on system, not a defined system. NWS is actively pursuing an AFOS follow on. NWS - plans to identify cost effective alternatives for replacing AFOS, the current information processing and communications system. The design of NOAA-PORT is dependent upon the design of the AFOS follow on. The AFOS follow on will fully utilize the GOES-NEXT, NEXRAD and ASOS data and benefits derived from different systems will provide higher resolution satellite data, better mesoscale forecasting using NEXRAD, better precipitation measurements from NEXRAD and a constant monitoring capability of ASOS.

Question. Since it seems that we do not have adequate data collection and analysis systems to handle the data being generated by existing and near future observation systems, could you please discuss the agency's plans for future system design, acquisition, and interaction? What systems do you envision bringing on line, what can we expect in terms of a time line for these new systems, and what are the expected future costs?

Answer. The modern radars (NEXRAD), improved weather satellites, and automated surface observing systems (ASOS) will provide critical observational information of unprecedented quality and quantity that are needed to define weather phenomena and their evolution. In addition, these powerful systems will accomplish significant data processing functions and automate many time-consuming manual tasks. The first NEXRAD production radars are scheduled for delivery in early 1990. The initial ASOS deliveries also are scheduled for 1990. The NWS plans to identify a cost effective alternative for replacing AFOS, the current information processing and communications system.

WEATHER SERVICE AND SATELLITE LONG RANGE PLANNING AND AGENCY PRIORITIES

Question. A) Assuming that the weather and LANDSAT satellite programs are consistent with a strategic plan for NOAA, are we providing the needed ground support to actually utilize the deluge of data which these instruments produce? B) Is NOAA seriously addressing the seemingly mundane, but absolutely critical, tasks of data management, dissemination, and analysis, or is the majority of this satellite data going to sit unused on the shelves of some government warehouse?

C) Finally, what exactly are the tradeoffs that we are making as we move down this path? Can we really say that they are justified, much less in the best interests of the Nation?

Answer. A & B) Yes. In both cases state-of-the-art real-time ground data processing systems capture the incoming data, support operational services (e.g., for the National Weather Service), and produce a complete archive of the data. The real-time weather satellite ground system is being upgraded to accommodate data from the next series of polar orbiting and geostationary satellites.

C) Data from these satellites systems are very heavily used. In FY 87 alone, 7,748 computer tapes (an increase of 24% of the FY 86 total of 6,270) and 6,012 images of weather satellite data were provided to a wide variety of users. NOAA provides users' guides, catalogs, expert advice, etc., to assist data users. NOAA's plans for upgraded ground systems for the next generation of weather satellites will take into account new or additional archive requirements and ensure that the present level of service to users is maintained.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

QUESTIONS SUBMITTED BY SENATOR HATFIELD

Question. Since the first federal hydroelectric dam was constructed on the Columbia River in the 1930's, the federal government has been an active participant in fishery programs in the Pacific Northwest. Congress and the previous eight administrations have recognized federal responsibilities in this area and several laws have been enacted to enhance our marine resources. The Federal obligations include mitigation hatcheries, fish treaty implementation and compliance, fishery management plans, and interjurisdictional fisheries. The investments of public funds in these programs have generated direct economic returns at national, regional, and local levels, far in excess of the cost to government. The loss of this funding support will result in immediate reductions in economic benefits due to fewer fish being produced and more conservative fisheries management. The stability of coastal communities, and other dependent on the optimum yield concept of effective resource management, will be weakened.

An illustration of the effectiveness of these programs is shown in the application of $37 million in FY86 to support Pacific Coast regional fisheries management. Of the total, $24 million were direct state funds, and another $3.5 million were federal grants used by the states to improve fishery data systems. An estimated $3.5 billion in personal income was generated in 1986 alone by the fishing industry in the Pacific coast states. Similar comparisons may be made for the other programs.

Why does the Administration continue attempts to remove itself from federally-obligated funding responsibilities for:

1) mitigation fish hatcheries required due to federal power and water projects?

2) fisheries monitoring and data programs required to achieve optimum yield management of groundfish and salmonid fisheries?

3) interjurisdictional programs (marine mammal, fisheries, grants-in-aid) in which participating states are already fully subscribed?

Answer. The Administration continues to propose termination of NOAA funding for operations and maintenance of hatcheries, and proposes transfer of funding responsibility to BPA rate payers instead. The general American taxpayer should not be asked to subsidize BPA costs associated with BPA customers consumption of power by financing the maintenance and operation of enhancement fish hatcheries necessitated by construction of hydroelectric dams and disruption of natural, wild runs of anadromous fish. The individuals, States, and the regional areas that directly benefit from the relatively inexpensive services resulting from federal power and water projects should assume responsibility for this associated cost.

The Administration maintains its belief that certain activities that previously have been Federally-funded, such as some data programs and interjurisdictional activities, should be the full responsibility of the individuals, states, and areas that directly benefit. These proposed terminations of funding and repeal of legislated responsibility are consistent with that position.

PUBLIC FUNDS

Question. With budgets for FY89 and beyond already constrained, what is the Administration's basis for placing a lower funding priority on programs, mandated under federal law, that demonstrate substantial economic returns from the investment of these public funds?

Answer. The Administration places the highest priority on those activities which it believes are appropriate Federal responsibilities. Given the deficit situation, even those activities cannot be fully funded and must be weighed against each other and other national priorities. The Administration believes that its investment of public funds as reflected in the President's FY 1989 budget is consistent with the priorities of the American people. Where those applications do not comport with current law, changes in legislation are also proposed.

PACIFIC FISHERIES INFORMATION NETWORK (PacFIN)

Question. The Pacific Fisheries Information Network (PacFIN) provides timely marine fish landing statistics and biological data to state, council, and federal managers and the fishing industry from California to Alaska.

A) How has that program been funded in the past?

B) Are there plans to fund it in FY89?

C) What are the projected economic consequences of not funding PacFin?

Answer. A) A few elements of PacFIN have been "funded" by contributions from NMFS resulting from redirection of program effort and support services. FY 1988 support will be approximately $400,000. In previous years the Pacific and North Pacific Regional Fishery Management Councils also contributed program funds to provide additional support of PacFIN. However, these discretionary program funds are no longer available to the Councils as the result of increasing administrative costs.

B) NOAA did not request funding for PacFIN in FY89. PacFIN funding would be considered when legislation for a Federal license/fee system is approved and associated revenues are available to offset PacFIN costs (approximately $3 million).

C) Economic consequences have not been calculated, but to the extent they may occur they would be associated with the value of lost fishing opportunities/catch resulting from early closure or potential stock damage and reduced future year quotas, if closures are made after quotas have been exceeded. NOAA did not request funding for PACFIN in 1989 because there is adequate information available to manage Pacific fisheries.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

QUESTIONS SUBMITTED BY SENATOR BYRD

Question. Last year, at my request, the Committee again included language in its report as follows: "Sufficient funds are provided to maintain the Weather Service stations in West Virginia at current levels." Please provide for the record a table showing the location, staffing, funding, and hours of operation of the Weather Service stations in West Virginia for fiscal years 1988 and 1987.

A. What is the situation with regard to the proposed fiscal year 1989 budget?

Answer:

		Hours of Operation	Planned		$K
Office	Staffing	1987	1988	FY 87	FY 88
WSFO Charleston, WV	25	24 hr/day	24 hr/day	1,274	1,340
WSO Beckley, WV	6	24 hr/day	24 hr/day	405	425
WSO Elkins, WV	4	16 hr/day	16 hr/day	168	175
WSO Huntington, WV	9	24 hr/day	24 hr/day	355	372
*WSO Parkersburg, WV	1	40 hr/week	40 hr/week	45	47

*WSO Parkersburg is a single-function office operating as an extension of WSFO Charleston's community weather preparedness program. The one-person staff uses the office for a base and is usually away from the office much of the time.

We do not plan any reductions in staff or in hours of operation for FY 1988. However, FY 1988 fiscal constraints may force a temporary reduction in the hours of operation at a WSO if that WSO develops a vacancy on the staff. This temporary reduction in the normal hours of operation will not affect the provision of weather warnings to the area. We expect this situation to continue through FY 1989.

Question: Last year, also at my request, the Committee included the following language in the Committee Report regarding the IFLOWS project: "The Committee expects NOAA to accelerate the implementation of the Integrated Flood Observing and Warning System (IFLOWS) in West Virginia and surrounding States." Please provide for the record, by county in West Virginia and year, a chronological history of the status of implementation of the IFLOWS project.

A. What needs to be done to implement the program throughout the state?

Answer. The attached table lists each participating county in IFLOWS, its status level, and the year the status level was achieved. Status levels are coded as follows:

1 - County Commission Approves Participation in IFLOWS
2 - NWS and County Conduct Preliminary Site Surveys
3 - NWS Conducts Engineering Study
4 - County Obtains Landowner Approvals (Radio rain gage installation)
5 - NWS Writes Engineering Study and Equipment List
6 - State Buys Equipment
7 - State Installs Equipment
8 - State Tests Systems (Partially Operational)
9 - County/State Receives Radio License Authorizations
10 - County/State Accepts System (Fully Operational)

Funding was not originally requested for the counties of Brooke, Clay, Hancock, Pleasants, Ritchie, Roane, Wetzel, Wirt, and Wood since they had indicated no interest in participating.

During 1987 and 1988, Federal funding has allowed West Virginia to procure 50 new computer systems, 46 of which either have been installed or are being installed in the participating counties. IFLOWS in West Virginia consists of a network of approximately three hundred radio reporting rain gage sites and seventy-one communications sites.

All IFLOWS participants (counties) are to be connected via voice and data radio systems to ensure speedy passage of information. This is to be accomplished by installing radio transceiver systems between all area National Weather Service offices, the counties, and the State Emergency Operation Center. Networking of all participants is dependent on obtaining approvals for approximately 25 radio repeater sites from state agencies and from owners of private radio towers. The State has obtained permission for approximately two thirds of these sites, but each owner imposes unique terms for use, and the facilities at each site vary greatly. These variations sometimes cause delays or cause a site to be ruled out after the design is completed. In most instances, however, the proposed design is progressing as planned, and equipment is currently being purchased to meet the IFLOWS design requirements.

Question. What are the relative responsibilities of the Federal Government and the State and localities regarding this program? Within existing Federal funds included in the President's budget, what more can be done to accelerate the implementation of this effort?

Answer. The National Weather Service is responsible for the overall management of the IFLOWS program, and enters into cooperative agreements with states to provide funding, technical support, forecasting guidance, equipment upgrades and replacement, software

WEST VIRGINIA IFLOWS STATUS BY COUNTY AND YEAR

STATUS LEVEL:	1	2	3	4	5	6	7	8	9	10
Barbour[1]	'86	'87	'87	'87	'88	'88	'88			
Berkeley[1]	'86	'87	'87		'88	'88				
Bonne[3]	'82	'82	'82	'82	'82	'83	'83	'83	'83	'83
Braxton[1]	'86	'87	'87	'87	'88	'88	'88			
Cabell[3]	'82	'82	'82	'82	'82	'83	'83	'83	'83	'83
Calhoun[2]	'86	'87	'87		'88	'88				
Doddridge[1]	'86	'87	'87	'87	'88	'88	'88			
Fayette[3]	'82	'82	'82	'82	'82	'83	'83	'83	'83	'83
Gilmer[2]	'86	'87	'87	'87	'88	'88	'88			
Grant[2]	'86	'87	'87	'87	'88	'88	'88	'88		
Greenbrier[3]	'82	'82	'82	'82	'82	'83	'83	'83	'83	'83
Hampshire[1]	'86	'87	'87	'87	'88	'88	'88			
Hardy[1]	'86	'87	'87	'87	'88	'88	'88	'88		
Harrison[1]	'86	'87	'87		'88	'88				
Jackson[3]	'82	'82	'82	'82	'82	'83	'83	'83	'83	'83
Jefferson[1]	'86	'87	'87		'88	'88				
Kanawha[3]	'82	'82	'82	'82	'82	'83	'83	'83	'83	'83
Lewis[2]	'86	'87	'87		'88	'88				
Lincoln[3]	'86	'87	'87	'87	'88	'88	'88			
Logan[4]	'80	'80	'80	'80	'80	'80	'80	'81	'81	'82
McDowell[4]	'80	'80	'80	'80	'80	'80	'80	'81	'81	'82
Marion[2]	'86	'87	'87		'88	'88				
Marshall[2]	'86	'87	'87	'87	'88	'88	'88	'88		
Mason[3]	'82	'82	'82	'82	'82	'83	'83	'83	'83	'83
Mercer[3]	'87	'87	'87		'88	'88				
Mineral[1]	'86	'87	'87	'87	'88	'88	'88			
Mingo[4]	'80	'80	'80	'80	'80	'80	'80	'81	'81	'82
Monongahela[2]	'86	'87	'87	'87	'88	'88	'88			
Monroe[2]	'87				'88	'88				
Morgan[2]	'86	'87	'87		'88	'88				
Nicholas[1]	'86	'87	'87	'87	'88	'88	'88			
Ohio[2]	'86	'87	'87	'87	'88	'88	'88	'88		
Pendleton[1]	'86	'87	'87	'87	'88	'88	'88			
Pocahontas[1]	'82	'82	'82	'82	'82	'83	'83	'83	'83	'83
Preston[1]	'86	'87	'87	'87	'88	'88	'88			
Putnam[3]	'82	'82	'82	'82	'82	'83	''83	'83	'83	'83
Raleigh[3]	'82	'82	'82	'82	'82	'83	'83	'83	'83	'83
Randolph[1]	'86	'87	'87	'87	'88	'88	'88			
Summers[2]	'87	'87	'87		'88	'88				
Taylor[2]	'86	'87	'87		'88	'88				
Tucker[1]	'86	'87	'87	'87	'88	'88	'88			
Tyler[2]	'86	'87	'87	'87	'88	'88	'88			
Upshur[1]	'86	'87	'87	'87	'88	'88	'88			
Wayne[3]	'82	'82	'82	'82	'82	'83	'83	'83	'83	'83
Webster[1]	'86	'87	'87	'87	'88	'88	'88			
Wyoming[4]	'80	'80	'80	'80	'80	'80	'80	'81	'81	'82

[1] Congressional add-on appropriation; funds transferred to WV Aug. '86.
[2] Congressional add-on appropriation; funds transferred to WV June '87.
[3] NOAA/NWS base funded.
[4] Equipment purchased and installed by NWS as part of pilot program.

NOTE:All status levels for all above counties to be completed in '88.

development, and training. The state implements the program by overseeing the landowner approval process for proposed gage and radio sites, arranging for the procurement and installation of equipment, training county personnel in the operational aspects of IFLOWS, and assuring that the county provides data to the appropriate National Weather Service office for an effective flash flood watch and warning program. Following operations acceptance, the state and county are responsible for the operation and maintenance of IFLOWS equipment and facilities.

During FY 1988, NWS attempted to accelerate the effort by providing funds to the West Virginia Office of Emergency Services for a full-time dedicated position for one year to ensure that the work associated with extensive statewide IFLOWS implementation can be accomplished in an efficient and timely manner.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

QUESTIONS SUBMITTED BY SENATOR SPECTER

Question. NOAA's Advanced Weather Interactive Processing System for the 1990's (AWIPS-90) was one of OMB's 17 "Presidential Priority Programs for last year and this year. Why, then, does the Administration's FY '89 budget request not include any funding for this program?

Answer. AWIPS is a concept for an AFOS follow on, not a defined system. The Administration continues to actively pursue the AFOS follow on. The National Weather Service will examine alternative cost-effective approaches for replacing the existing information processing, display, and communications systems to identify the most cost effective future configuration.

Question. If as the Administration has indicated, AWIPS-90 is the "brain and central nervous system" of the National Weather Service's (NWS) modernization program, how can NWS modernization initiatives proceed with AWIPS-90?

Answer. The Congress, not the Administration, labeled AWIPS the "brain and central nervous system" of the NWS modernization program. The modern radars (NEXRAD), improved weather satellites, and automated surface observing systems (ASOS) will provide critical observational information of unprecedented quality and quantity that are needed to define weather phenomena and their evolution. In addition, these powerful systems will accomplish significant data processing functions and automate many time-consuming manual tasks.

NWS will identify cost-effective alternatives to replace AFOS the current information processing and communications system. The AFOS follow on will allow modernization to proceed in a timely manner.

Question. The U.S. has the most severe weather patterns in the world but lowest number of weather personnel per 1,000 population of any developed nation. Given this, shouldn't we be expanding initiatives such as AWIPS-90, rather than eliminating funding for them?

Answer. No. The planned modernization of the National Weather Service directly addresses the need to improve forecasts and warnings of hazardous weather and flooding through advanced technology and increased productivity. Concerning AWIPS-90 specifically, the NWS will examine alternative approaches for replacing the existing information processing, display, and communications systems to identify the most cost effective future configuration.

SUBCOMMITTEE RECESS

Senator HOLLINGS. The subcommittee will now recess, and reconvene at 10 a.m. on Wednesday, March 30, when we will hear from the Legal Services Corporation.

[Whereupon, at 11:23 a.m., Wednesday, March 23, the subcommittee was recessed, to reconvene Wednesday, March 30, 1988 at 10 a.m.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1989

WEDNESDAY, MARCH 30, 1988

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10 a.m., in room S-146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Sasser and Rudman.

LEGAL SERVICES CORPORATION

STATEMENT OF WILLIAM CLARK DURANT III, CHAIRMAN, LEGAL SERVICES CORPORATION

ACCOMPANIED BY:
- JOHN H. BAYLY, JR., PRESIDENT
- THOMAS F. SMEGAL, BOARD MEMBER
- PAUL EAGLIN, BOARD MEMBER
- MICHAEL B. WALLACE, BOARD MEMBER, BASILE UDDO, BOARD MEMBER

BUDGET REQUEST

Senator HOLLINGS. This morning, we continue our 1989 topical hearings on major items under the jurisdiction of this subcommittee.

Before us today is the request of the Legal Services Corporation who, after 3 months, is submitting an amended budget of $250 million, $55.5 million or 18 percent below their original request of $305.5 million.

The Legal Services Corporation's amended budget request is significant not only because it reflects the amount recommended in the President's budget, but because it allocates funding along the lines of the Gramm amendment, which was soundly defeated during consideration of the fiscal year Continuing Resolution by a vote of 70 to 28.

INTRODUCTION OF WITNESSES

Appearing on behalf of the Legal Services Corporation are its Chairman, William Clark Durant III; its President, John H. Bayly, Jr.; and Board Members Thomas F. Smegal, Paul Eaglin, Michael B. Wallace, and Basile Uddo.

In a slight departure from our normal proceedings, we will also hear testimony from John J. Curtin, Jr., chairman of the American Bar Association's Standing Committee on Legal Aid and Indigent Defenders.

We welcome you, gentlemen. I must necessarily go to another appointment so I will turn this over to our former chairman and now ranking member, Senator Rudman.

HEARING PROCEDURE

Senator RUDMAN. Thank you, Mr. Chairman. I agree with that statement, I join it, and I will make no opening statement.

How do you want to proceed this morning since Mr. Durant has been delayed, and since we all have time constraints?

We have Mr. Durant's statement, it will be in the record, as it was submitted, in full.

Mr. BAYLY. Of course, it is at your pleasure, Senator Rudman. Perhaps I could deliver very briefly what I have to say.

Senator RUDMAN. Why don't I do this? Why don't we start out and have you make whatever statement you want to make. Do you have a prepared statement?

Mr. BAYLY. No, Senator, I do not.

Senator RUDMAN. Mr. Wallace, do you have a statement?

Mr. WALLACE. Yes, I do. I believe it has been submitted.

Senator RUDMAN. That statement will be put in the record in full.

Professor Uddo, do you have a prepared statement?

Mr. UDDO. I don't have a prepared statement.

Mr. EAGLIN. I have a prepared statement.

Senator RUDMAN. That will be in the record in full.

Mr. Smegal, you have one, I have seen it.

Mr. SMEGAL. I have one.

Senator RUDMAN. That will be also printed in the record. Now the entire record will be replete with all the opening statements. Why don't we start with the President of the Corporation, and we will just go right down the line and have you say whatever you think is significant, and summarize as best you can. I will have some questions.

By that time, hopefully Mr. Durant will be here, but if the airplane schedules into Washington are as usual, he will be here at about 4 this afternoon.

Go ahead.

Mr. BAYLY. Thank you, Senator. I very much appreciate the opportunity to be here and to once again assure you that the funds appropriated to the Legal Services Corporation's budget will be expended for the effective and efficient provision of legal services to poor people in our communities and as conform with all provisions of law.

COMMEMORATION OF JULIAN PEARSON

Senator, may I also at this time make a brief mention of the recent and lamented death of Julian Pearson of North Carolina. He was a staff director and executive director of the program there. He was well-known for his services, his dedication and his devotion to many people in the community. His death is deeply regretted by both the corporation and all those who he has served.

Thank you very much.

Senator RUDMAN. Mr. Wallace.

Mr. WALLACE. Thank you, Senator. You have my remarks in the record, I won't go through them in detail.

I do think that it is important to say to you what I have said in writing, which is that I understand that it is important for this committee to be able to trust this board. It is very difficult for us to do business if we can't. I believe I have kept the commitments that I made to this committee. I have made the record in my remarks that are printed for you. I have copies of the letters referred to in there, which I would like to submit for the record today.

I have confidence in my staff. I have confidence in Mr. Bayly who carried out the investigation you asked us to carry out last year, and to the best of my knowledge, he found everything there is to find. I have confidence in him and his staff, and I believe you can have confidence in things that we, as Board Members, each of us, say to you today.

Senator RUDMAN. Mr. Wallace, these letters will be included in the record at the conclusion of your testimony.

Mr. WALLACE. Thank you, Mr. Chairman, I appreciate that.

I can tell you that, as chairman of the regulations committee, my concern is with the two regulations that are tied up in language in the rider. I have gone through those in detail in my testimony.

GOVERNING BOARD REGULATIONS

As for the governing Board regulations, we do listen to the remarks we get. We have modified those substantially from what was before us when Congress acted last December. We believe that all the restrictions we have placed are sensible and appropriate, and most of them are restrictions that we abide by as a Board: bipartisan balance, the lack of proxy votes, requirements of quorums in regular meetings, and refusal to delegate to executive committees.

If we tried to delegate the duties of this Board to a committee made up of me, Mr. Durant and Ms. Bernstein, Congress would be outraged and it should be. We are all here to do this job. I feel the same way about every board in the country. I think that it is a good regulation.

LOBBYING REGULATION

As to the lobbying regulation, as far as I can tell from our discussion last year, and from the language of the rider, the only disagreement we have between ourselves is a disagreement as to what the Constitution permits with regard to using Federal funds to attach strings to private funds. Congress does that every day, and did it most recently last week in the Civil Rights Restoration Act.

I believe there is no constitutional problem with it. Mr. Houseman, a lawyer, told us in Seattle that if there is a constitutional problem with the regulation, then the act, section 1010(c) of the act, is unconstitutional. I don't believe the act is unconstitutional. I don't believe our regulation is unconstitutional.

I think that it is important to avoid fund juggling to have the restrictions that apply to our funds apply to all funds. That is why we have done the regulation. We think that it is a good one. We think there is no constitutional impediment to it. We hope that on further reflection, Congress will agree with the constitutional position the Board is taking. Let us enforce the act, and let us enforce the regulations.

This is all I have to say, Mr. Chairman.

Senator RUDMAN. Thank you, Mr. Wallace.

[The prepared statement and letters submitted by Mr. Wallace follow:]

STATEMENT OF MICHAEL B. WALLACE
MEMBER
BOARD OF DIRECTORS
LEGAL SERVICES CORPORATION

Good morning, Mr. Chairman, and Members of the Subcommittee. I am Michael B. Wallace. I am a partner with the law firm of Phelps, Dunbar, Marks, Claverie, and Sims of Jackson, Mississippi. I serve as a Member of the Board of Directors of the Legal Services Corporation ("LSC"), and as the Chairman of its Committee on Operations and Regulations.

Mr. Chairman, I will focus my testimony on efforts of the LSC Board to promulgate revisions to its lobbying and recipient governing boards regulations during 1987. Restrictions on the Corporation's ability to regulate in these areas were included in the Corporation's 1988 funding measure. I am hopeful that my explanation of the Corporation's actions regarding the lobbying and governing boards regulations will persuade your Committee and the full Congress to remove the restrictions as unnecessary.

However, there is not much point in my proceeding further unless there is some reason to suppose this Subcommittee might believe what I say. The ranking Member of this Subcommittee told the Senate last December that six of the eleven Members of our Board had "doublecrossed" this Subcommittee and that our "word is not worth the paper it is printed on." I have reviewed the full record of my dealings with this Subcommittee, and that record reveals that this Member of the Board has kept his commitments.

The extent of those commitments is easily documented. I have appeared before this Subcommittee only once, at last year's hearing on our appropriation. That hearing was my only meeting with the ranking Member; I have never met with the Chairman.

Since my confirmation I have had no contact with the staff. All of my communications with this Subcommittee outside the hearing room have been in writing.

The record reflects that I have made only one commitment to this Subcommittee. At last year's hearing, I reminded the Subcommittee that I am responsible for the conduct of the Corporation's officers and staff, and I asked the ranking Member for details of his charges against our staff, particularly his charge that unnamed persons broke the law by interfering in his election campaign. I committed the Corporation to a full investigation of those charges and that commitment has been kept. President John Bayly's report, transmitted to the ranking Member on September 9, 1987, disclosed that one employee had submitted an inaccurate resume, and she left the Corporation; he found no substantial basis for the remaining charges, including the primary charge of illegal political conduct. On September 21, 1987, I wrote to the ranking Member, asking him to provide evidence to support his charges or withdraw them. I received no response. I renew that request today.

I am well aware that a federal agency cannot function effectively without the trust of its appropriation subcommittees. I review the record this morning because I want this Subcommittee to understand that it can rely on my word. Should this Subcommittee choose to distrust me, at least it should have the opportunity to do so on a full record.

The danger of the current system of substantive legislation through the appropriations process is most plainly exemplified by the language in the 1988 continuing resolution restricting the Corporation's power to modify its existing regulation on governing boards, even though the proposal remained in the notice and comment stage. I cannot say what fears and concerns may have motivated the Members of Congress responsible for the insertion of this language, because the legislative history does not even disclose who they are. I offer no criticism of those Members, because I well understand that the prevailing system of annual continuing resolutions requires that perceived emergencies, real or imagined, be addressed on the first available vehicle because there will not be another chance for a year. At the same time, I remind you that this Subcommittee has never considered this restriction, has never heard all sides of the question. This Subcommittee has as much reason as the Corporation to regard this issue as an open question and to decide the matter on the basis of all the evidence.

Much of the negative reaction to LSC's proposed revisions to Part 1607 appears to have been based on inaccurate speculation that neither the Operations and Regulations Committee nor the full Board would carefully weigh public comment and make appropriate changes. However, a review of the procedures followed by my Committee and the whole Board, I believe, demonstrates that the Corporation, in the ordinary course, conscientiously discharges its authority to regulate with careful attention to the objectives of the Legal Services Corporation Act, 42 U.S.C. 2996, et seq.

The record will show that Committee members, in the first instance, and then the Board members carefully considered all comments and, when appropriate, receded on a number of points in the proposed rule. My Committee originally proposed changes to 45 C.F.R. Part 1607, LSC's regulations on recipient governing bodies, in October 1987. Due to public request, the comment period was formally extended once to December 10, but comments submitted up until the February 1988 Board meeting were duly considered. The Committee held public hearings on the proposed changes in Philadelphia, Pennsylvania, on November 20, 1987, in Charleston, South Carolina, on December 17 and 18, 1987, and in Washington, D.C., on January 28-29, 1988. The Board heard public comment on February 26, 1988.

The primary purpose of the Committee in proposing revisions to Part 1607 was to ensure the proper implementation of the

McCollum Amendment which requires that a majority of a recipient's board be attorneys appointed by general membership state, county or municipal bar associations, the membership of which represents a majority of the attorneys practicing law in the locality in which the organization is to provide legal assistance. The purpose of the McCollum Amendment was to ensure accountability of recipients by giving oversight responsibility to appropriate bar associations and by preventing self-selecting and self-perpetuating recipient governing bodies. Because the Corporation has encountered problems in the implementation of the McCollum Amendment, the Board initiated proposed changes to address some of the problems.

One of the proposals made by the Committee was to require that the state bar associations, rather than local bars, be given appointment authority for local boards. The record made before our committee demonstrates that many county bar associations lack representation on the boards of multi-county programs, and representation on many boards does not even remotely approximate the distribution of lawyers in the service area. We thought that appointment by the state bar, which represents all lawyers, would insure that all lawyers would have a chance to be heard. Wishing to broaden democratic participation, we proposed that the bars elect appointing committees. These provisions were later dropped by my Committee, not because we concluded the problem did not exist, but because the proposed solution entailed disproportionate cost and administrative demands.

The evidence also shows that no national support center has ever complied with the McCollum Amendment. The policy adopted by our predecessors allows the recipient to choose the state, county, or local general membership bar in the area where the recipient maintains its principal place of business, which was used as a proxy for service area. New language added would require that the attorney appointment function for national support centers be performed by a combination of state, county or municipal bar associations whose combined membership represents a majority of attorneys in the nation. A central purpose of the McCollum Amendment was to vest appointing authority in the general membership bar association or associations located in the recipient's service area. By definition, the area served by the national centers is the entire nation. Thus, in order for the regulations to comport with the language and intent of the McCollum Amendment, the Board believes it necessary to vest authority in an appropriate combination of state, county, or municipal bars whose memberships represent a majority of attorneys in the nation. We leave it to each program to assemble a collection of bar associations meeting this standard. While we know this procedure is cumbersome, no other rule is consistent with the plain language of the amendment.

We retained the original proposal requiring bipartisan recipient boards. No more than sixty percent of a governing body may be members of the same political party, excluding those registered as independents. The method for determining party affiliation is also provided. Just as Congress felt that a bipartisan board at the national level was necessary to ensure an organization free from domination by one political party, so the LSC Board believes that a bipartisan requirement for the local recipient boards will further the same interests and is necessary to implement requirements in the LSC Act to keep the legal services programs free from the influence of political pressures.

The Constitutional concerns raised by some comments are not persuasive. Indeed, the cases cited in the comments support the Corporation's view that political affiliation is a legitimate factor for consideration where the interest protected is the preservation of the democratic process or the freedom of individuals from control or abuse by one political party. As Madison knew, it is not enough simply to tell recipients of federal authority to forswear partisan abuses; checks and balances are also necessary. It is the obligation of this Board to protect the rights of indigent clients to receive legal services free from political party concerns and a bipartisan board is the best check and balance that we can provide.

The Board also added a provision granting authority to recipient governing bodies to appoint committees but prohibits the committees from taking any final or binding action unless the action is ratified by the full governing body prior to implementation, or unless the committee's quorum and membership requirements reflect those of the full Board. This provision was added to ensure accountability and involvement by the full Board and prevent a situation where just a few Board members control activities. This is especially important if it is client Board members who are left with an inactive role. For the same reasons, proxy voting restrictions and voting requirements were added to ensure accountability and full, active, and informed participation by all Board members. There is nothing onerous about these regulations; they are largely identical to the restrictions our Board has imposed on itself.

Finally, language was incorporated from LSC's Guideline 83-1 on recipient governing bodies where appropriate. This incorporation does not signify a change in law as the recipients are already subject to the Guideline, but is added so that the information can be readily available in the Code of Federal Regulations to all interested parties.

I assure this Committee that the LSC board has conscienciously acted to promulgate regulations consistent with the McCollum Amendment and other applicable statutory authority. We remain open to suggestions from anyone for improvement in our implementation of Congressional intent. Should this Subcommittee, after reviewing the full record, disagree with our view of the law, then it should adopt specific language to correct specific problems instead of depriving us of all authority to deal with problems that may arise now or in the future.

I would now like to turn to the Corporation's lobbying regulations which are delineated in Part 1612 of Title 45 of the Code of Federal Regulations. In May, 1984, due to Congressional concern about certain political activities being carried out by the Corporation and its recipients and recommendations by the Government Accounting Office that LSC revise its lobbying regulations, the Corporation revised Part 1612. Not fully satisfied with the revisions Congress included a reprogramming requirement in LSC's FY 1985 funding act and instructed LSC to republish its regulations for comment. After extended consideration of proposed changes, LSC adopted another amended rule that was published as final in August 1986. Still not completely satisfied, Congress included a proviso in LSC's 1987 funding act that prohibited the Corporation from enforcing or implementing either the 1984 or 1986 lobbying regulations.

After publishing its regulations for further reconsideration, the Corporation worked closely with the designated representative of legal services programs, and carefully reviewed the concerns expressed by Members of Congress. Consequently, the Corporation was able to achieve a compromise that, according to statements made at public hearings, had the strong support of representatives of LSC grantees.

The Corporation received reprogramming approval from the appropriations committees but was requested by the Senate Committee to revisit the issue of regulation of private funds. The Corporation promptly published the rule as final and requested public comment on the narrow issue of private funds. As a result of deliberations in Seattle in August 1987, the LSC Board agreed to make two changes to the rule. Clarifying language was added to the exception on the use of private funds to pay dues, and a grandfather provision was added to minimize any hardship for recipients that entered into contracts prior to notice of LSC's intent to regulate private funds in certain areas. At the same time, the Board thoroughly considered and rejected the suggestion that the restrictions on private funds violate the first amendment rights of LSC recipients.

Concern about the constitutional challenge prompted Congress to include a new restriction in LSC's FY 1988 funding act which disallows the use of LSC funds to implement or enforce provisions in Part 1612 "which impose restrictions on private funds received by a recipient for the provision of legal assistance except to the extent that such restrictions are explicitly authorized by the LSC Act. LSC understands this language to mean that the Corporation may regulate the use of private funds for restrictions delineated in the LSC Act but may not regulate the use of private funds for those restrictions found in the appropriations act that go beyond those found in the LSC Act.

Essentially, there are two prohibitions in the appropriations act language that are more restrictive than those in the LSC Act. First, the broad language in section 1007(a)(5) of the LSC Act provides that no funds made available to recipients may be used, directly or indirectly, for legislative, administrative, or grassroots lobbying except when done on behalf of an eligible client or at Congressional request. Although the more specific proscriptions in the appropriations act generally complement the broad provisions of section 1007(a)(5) by generally setting out the same proscriptions with more detail, the appropriations act eliminates the eligible client exception to the grassroots lobbying proscription. Because of last year's lobbying rider, LSC may not enforce its regulation prohibiting the use of private funds for grassroots lobbying on behalf of eligible clients.

Second, section 1007(b)(6) of the LSC Act prohibits the use of funds for certain advocacy training activities but allows funding for the dissemination of information about public policies and certain delineated activities. The appropriations act specifically disallows the use of funds for the dissemination of such information. Because of last year's lobbying rider, LSC may not enforce its regulation prohibiting the use of private funds for dissemination of this information. With these two exceptions, it is our present view that we may use appropriated funds to enforce all provisions of our lobbying regulations. I remind the Subcommittee that, whether we can implement or enforce it or not, the entire regulation is still law, and it is binding on all recipients.

It is LSC's belief that it has the authority under the LSC Act and as a private non-profit corporation to apply private funds restrictions to all lobbying restrictions in the appropriations acts. LSC's assertion of authority in this area is consistent with the intent of Congress when it promulgated the 1974 LSC Act. It is clear, as evidenced by section 1010(c) of the Act and its legislative history, that Congress intended to prevent legal services programs from engaging in prohibited activities, even when using private funds, so that the programs would be free from using or being influenced by political pressures. If today we allow the use of private funds for activities restricted in the appropriations act, such action would defeat this original Congressional intent, which was one of the preconditions of the Corporation's creation.

It is also LSC's view that section 1010(c) is constitutional as applied to both the LSC Act and the appropriations acts. Counsel for the LSC recipients testified at our hearing in Seattle that section 1010(c) of the LSC Act is unconstitutional even when applied to lobbying activities restricted in the LSC Act. Thus, if the Conference report is correct, that our regulation is unconstitutional to the extent it restricts the use of private funds, it logically follows that LSC should be precluded from enforcing section 1010(c) at all. However, section 1010(c) was an essential and non-severable part of the

Act which created the Corporation. If section 1010(c) falls, in my view, the whole Act falls, and the Corporation must close until Congress and the President can agree on a new, fully constitutional Act.

The Board, however, has avoided this dilemma by rejecting the constitutional argument on its merits. Generally, Congress can place conditions reasonably related to the objects of the program upon a grant of federal money, such as the restrictions found in the LSC Act and appropriations act and the Civil Rights Restoration Act passed over the President's veto last week. Pursuant to this authority, Congress has placed numerous restrictions on political activity in the LSC Act. Some of these restrictions, such as those on electoral activities by employees of LSC recipients, have been sustained as constitutional, based on well-settled Hatch Act precedent. Case law supports the view that intrusion into political activity is permissible when the interest protected is the right of individuals to receive government services free from discriminatory political concerns.

In summary, the Corporation remains committed to enforcing the clear mandates of the LSC Act. The Corporation believes that section 1010(c) is constitutional as applied to lobbying restrictions, both in the LSC Act and the appropriations rider. It also believes that Congress intended to preserve the integrity and strength of the legal services program by not subsidizing programs that engage in most lobbying activities even when these activities are funded with private funds, and that it has attempted, in good faith, to promulgate regulations consistent with Congressional intent and constitutional constraints. The language contained in the President's budget request for LSC for 1989 will allow the Corporation to continue its efforts to ensure compliance of LSC with the mandates of Congress. It is with enthusiasm that I urge your support of the President's proposal.

LETTER FROM JOHN H. BAYLY, JR.

September 9, 1987

The Honorable Warren B. Rudman
United States Senate
530 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Rudman:

In correspondence of May 26, 1987, you were given assurance that I would conduct a close review of concerns identified by you at the hearing held on May 20 before the Commerce, Justice, State, and Judiciary Subcommittee of the Senate Committee on Appropriations. After the hearing, questions you had raised were restated with additional particularity by your staff.

Inquiry into questioned activities was directed personally by Timothy B. Shea, General Counsel to the Legal Services Corporation. His report to me was presented to LSC's Board of Directors during its executive session on August 27. I now provide you with the results of the report furnished first to LSC's Board of Directors.

I. Two related concerns arose from assertions that LSC staff had devised a plan to destroy corporate documents. Attention was first directed to instances of shredder operation by LSC staff. Inquiry was also made as to whether LSC staff had drafted or implemented a contingency program to shred Corporate papers.

An electrically powered machine to shred papers was acquired several years ago by the Corporation. It was intended for use by the Corporation's Secretary in disposing of stale or outdated documents, including archived commercial paper.

Before Mr. Shea's inquiry, LSC's Office of Administration had maintained the shredder in a locked storage room, along with other office furniture and equipment, under the custody of a clerk. The shredding machine is small, the size of a free-standing microwave oven and incapable of handling entries in bulk. It jams easily. Although the storage room is ordinarily open and accessible to LSC employees during the day, the shredder was kept with stored office furniture in an infrequently used open area readily visible to the clerk or any other employee in the room.

Immediately after the May 20th hearing, the shredder was found to be in its regular place nearly surrounded, as before, by large, heavy office furniture. The clerk to whose custody the shredder had been committed affirmed that no recent use of the machine had been made. Indeed, the equipment was unusable in situ because of the surrounding mass of stored furniture and the lack of an accessible outlet for electricity. When removed for examination, the shredder contained -- presumably from its last use -- bits of material, principally colored copies of checks. A few days thereafter, the shredder was partly disassembled and taken into custody by the General Counsel who stored it in a locked closet near his office. Only LSC's Office of Administration has access to that closet.

For an extended period of time prior to May 20, a specific instruction had prohibited use of the shredder without direct and particular permission. Written description of each proposed use was required and a log was maintained to record operation of the machine. The log has four entries. Verbatim, they are:

Date	User	Office	Material	Authorized By
2/86	S. Simmons	Administration	Old Diners Cards copies of Diners bills sent to the Corporation.	MM
6/86	T. Baker	Secretary	Presidential search papers for LSC--old	MM
7/86	S. Hickey	Personnel	Old computer runs of wage and salary on employees	MM
8/86	D. Shaney-felt	Policy Development	Old 'sample' legislation and their working notes.	MM

The authorizing official, whose initials are "MM," was March Miller, formerly Director of LSC's Office of Administration.

The destruction of financial records, such as old LSC check copies, Diners Club bills, and salary runs, appears to be entirely appropriate. In addition, destruction of presidential search papers was directed by the LSC Board following their retention for a year by the Secretary of the Corporation.

The fourth recorded use of the shredder, while inappropriate because unnecessary, was likewise fundamentally benign. It occurred in August of 1986 when a staff member from the Office of Policy Development, David Shaneyfelt, decided to seek out and use the shredder. He acted on whim and from curiosity. A new employee, Mr. Shaneyfelt had heard that the shredder was available but was unaware of the restrictions on its use.

After first inquiring about the shredder at the Comptroller's Office, Mr. Shaneyfelt was directed to the storeroom clerk who had custody of the machine. With the assistance of the clerk, but without securing the requisite approval, Mr. Shaneyfelt operated the shredder. As Mr. Shaneyfelt's interest was merely in exploring how the machine operated, he shredded only a limited number of draft research documents, copies of which remained available in his office. A few days later, Mr. Shaneyfelt was called by Mr. Miller who questioned him about the nature of the materials shredded and his authorization to use the machine. Two weeks later, Mr. Shaneyfelt was again carefully questioned by myself, then General Counsel, about the reasons for his use of the shredder. Mr. Shaneyfelt was admonished never to use the shredder without prior authorization. He was reminded that such approval would not be lightly granted.

Besides four recorded uses of the shredder, an unrecorded use of the machine was made in August of 1986 by the Comptroller's Office when it destroyed copies of old checks. The Comptroller's Office removed the shredder to its own workplace and kept the machine there for several days because the device repeatedly jammed. In fact, the machine worked so poorly that the project to use it was abandoned even though many checks remained to be destroyed.

Reports of a concerted effort to destroy documents have not been substantiated by any facts gathered in this investigation. Such reports may, however, have arisen from certain contretemps occurring among staff at a time when unauthorized use of the shredder was being reviewed.

Policy Development staff had derived certain amusement over what it regarded as undue attention and excessive procedures accorded operation of the shredder. In jest, Michael Fumento, a Policy Development staff member, drafted a memorandum purporting to be addressed by Mr. Miller to then LSC President, James Wentzel. The bogus memorandum burlesqued procedure for document shredding. For example, before shredding, it called for a document to be noted in the Federal Register and made available to the public for a period of thirty days prior to destruction. When a copy of the fake memorandum was given to Mr. Wentzel, he strongly admonished the Policy Development staff to avoid such inappropriate suggestions even in jest. 1/

In consequence of the foregoing account, the LSC Board has accepted my recommendation that the shredder remain disassembled in the exclusive custody of the General Counsel or his designee, so that any future use will be subject to his specific advance approval.

II. Numerous provisions of law quite properly restrict what political activites are permitted to Corporate employees. Understandably, any violation of those restrictions, or even the appearance of infringement, furnishes cause for deep concern. Specifically, your staff voiced special apprehension that LSC staff -- in particular, Robert Elgin, Michael Fumento and David Shaneyfelt, all then employed in the Office of Policy Development, and Anthony Gomes, head of the Office of Monitoring -- had engaged in political activities. Specifically, you indicated a belief that LSC staff may have interfered with the 1986 New Hampshire senatorial election; your staff pointed to materials assertedly furnished to a New Hampshire right-to-work organization, to a New Hampshire gun-owners organization, and to the Manchester Union Leader. Also adverted to by your staff was an article in the May 25, 1987, edition of the Legal Times, which asserted that a letter-writing campaign against your re-election had been launched, that conservative mailing lists were solicited for such purpose, and that efforts were made to channel to columnists information critical of your service in the Senate.

As you will recall, my first response to your stated concern was to issue a memorandum reminding LSC officers and employees of the strict prohibition on use of Corporate resources (or position) to engage in political activity. The memorandum was furnished to each employee and officer, was required to be endorsed, and was returned, after signature and witnessing co-signature by the appropriate supervisor, for permanent inclusion in each employee's personnel folder. 2/

1/ No copy of the memorandum has been found. Mr. Fumento's assertion that he typed the script on a manual typewriter has been born out inasmuch as the document did not appear after search of Policy Development computer files.

2/ The cautionary procedure established in my memorandum has continued to be implemented by LSC's Office of Personnel in respect of all subsequently hired staff.

Second, Mr. Shea in his investigation undertook a closer, more searching inspection. He first interviewed Michael Coster, former Comptroller of LSC, as Mr. Coster had made a prior assessment of alleged political activity at LSC in December of 1986. Mr. Coster's inquiry -- which he was reluctant to call an investigation for fear of overstating its limited scope -- uncovered no evidence of political activities at LSC. In the course of his review Mr. Coster encountered no evidence of contacts with any New Hampshire right-to-work organization, nor of efforts to obtain a conservative mailing list. Subsequently, Mr. Coster delivered a letter to LSC Board Chairman W. Clark Durant, III, confirming that he had accumulated no evidence of improper political activities or public relations. Mr. Coster has noted that he reported his findings in this respect to the Board during its January 2, 1987, executive session. Mr. Coster has characterized allegations of political improprieties at LSC as "fiction."

Mr. Shea then questioned former LSC employees Steven Richards Valentine, David Shaneyfelt and Michael Fumento, as well as current staff members Robert Elgin and Anthony Gomes. Each denied any attempt to influence the 1986 New Hampshire senatorial campaign. Any undertaking to marshal mailing lists, to lobby constituents, or to channel materials to politically active New Hampshire organizations was specifically denied. The General Counsel's review of computerized document files in LSC's Office of Policy Development, along with inspection of the overnight messenger mail register, have revealed no documentary or other tangible evidence supporting such claims. The sole occurrences facially related to concerns about political meddling were responses made by LSC staff to requests from the Manchester Union Leader and from the office of an independent, conservative candidate who was a contender for your Senate seat. Yet those exchanges were wholly regular and, notably, were in each instance initiated by the requesting party.

LSC's Office of Public Affairs responds regularly to ordinary inquiries from public officials, journalists, media representatives, and members of the public. Its purpose is to expedite the provision of public information, including pertinent statutory and regulatory texts, Corporate facts and statistics, and proceedings of LSC's Board of Directors. 3/ On September 26, 1986, Daryl Borgquist, Manager of LSC's Office of Public Affairs, forwarded by overnight mail materials requested by the Manchester Union Leader. While Mr. Borgquist has retained no copies of what he furnished, nor could he specifically recall each document he provided, Mr. Borgquist was certain that the request and LSC's response were in the ordinary course of business and so constituted the transmission of publicly available information. Of course, Mr. Borgquist responds to similar requests daily.

In addition, during the late summer or early fall of 1986, three telephone calls were received by the Office of Public

---

3/ Access to LSC documents and information is provided to the public through operation of the Freedom of Information Act, 5 U.S.C. Section 552. Inquiries from the press, however, along with any simple request for documents LSC has available in bulk, are answered directly by LSC's Office of Public Affairs. As noted, supra, separate response to media inquiry is made in recognition of the nature and function of the media and its frequent need for the prompt provision of public information.

Affairs from the campaign staff of Bruce Valley, an independent contender for the New Hampshire senatorial seat. Two calls were made by a Valley campaign worker and one by Valley himself. In each response, Mr. Borgquist gave the same ordinary answers otherwise furnished to the public and forwarded the general information sought, *e.g.*, a copy of the *LSC Fact Book*. Mr. Borgquist reported each Valley request to his immediate supervisor, the Director of the Office of Policy Development and Communications, and to LSC President Wentzel. Mr. Borgquist was mindful of admonitions from Mr. Wentzel and Vice-President Charles Jarvis that he must treat any campaign-related request with great care to avoid even the appearance of partiality. Only public information specifically requested was allowed to be furnished through the Office of Public Affairs.

Finally, in the course of appropriations hearings, during the late summer of 1986, the Corporation resisted certain proposed appropriations language that would have imposed prohibitions on various Corporate inititatives. As the language was being developed at the subcommittee level, Corporate staff, at Board instance, contacted officials in the Administration and in Congress to garner support for modifications to the proposed language. Your office, of course, was well aware of the Corporation's efforts to persuade other members to oppose constraints imposed by the proposed legislation. The Corporation's efforts drew the attention of columnists William F. Buckley and James J. Kilpatrick. Mr. Buckley wrote about LSC in an article that was syndicated nationally and appeared in the *Manchester Union Leader* on September 12, 1986. In preparation for that article, Mr. Buckley telephoned Mr. Valentine, then Director of LSC's Office of Policy Development and Communications and, upon Mr. Buckley's request, was furnished by LSC with copies of the proposed bills and report language, together with prior bills and reports [illegible] a copy of *Legal Services History* by John A. Dooley and Alan W. Houseman (NLADA, 1984). The materials were forwarded by overnight mail on September 4. On September 5 some materials omitted the day before were also sent to the requester. Mr. Buckley's telephonic request of Mr. Valentine for publicly available documents was the sole contact in this regard between Mr. Buckley and LSC staff.

Columnist James J. Kilpatrick also wrote an article about LSC. It was syndicated nationally on or about September 10, 1986. In connection with his article, Mr. Kilpatrick also telephoned LSC's Office of Public Affairs. Mr. Borgquist recalls that Mr. Kilpatrick appeared to be very knowledgeable about LSC issues and that Mr. Kilpatrick remarked having previously discussed LSC issues directly with you. While Mr. Borgquist sent to Mr. Kilpatrick only the publicly available information he sought, Mr. Borgquist perserved no record (or recollection) of precisely what documents he supplied to Mr. Kilpatrick.

Examination of the available facts and circumstances indicates that LSC staff neither wittingly nor inadvertently interfered with political activity. Nonetheless, because of the great possibility for misunderstanding, I am undertaking to establish at once a meticulous record-keeping process so as to document each request for information received by LSC's Office of Public Affairs. Measures are being initiated to record each inquiry and to make manifest LSC's response in order to document and so ensure utter impartiality in the distribution of public information. In addition, I am reminding all LSC employees that requests from the media must continue to be referred to the Office of Public Affairs. Last, I have reiterated to senior LSC staff the unquestionable propriety in furthering Board policy favoring or opposing legislative initiatives directly affecting the activities of the Corporation. At the same time, I have emphasized with equal force the indisputable impropriety in ever favoring or opposing any candidate for office.

III. Concerning LSC employee Wanda J. Banks, two assertions were specified. First, you affirmed that sometime ago you had expressed uneasiness privately to Chairman Durant that Ms. Banks had declared her intention to destroy the Corporation from within. Your concern was thereafter intensified because Ms. Banks, then a consultant, was subsequently made a regular employee of the Corporation despite the statement attributed to her. Second, you identified information which had come to your attention and revealed that Ms. Banks' employment application had been inaccurately completed.

Ms. Banks began her work at LSC as a consultant in March of 1985. At that time Ms. Banks was compensated at a rate of $150 per day to assist with fiscal matters related to the FY 1985 funding activities in the Grants and Budget Division of the Office of Field Services and to assist the Deputy Director of OFS. At the close of her initial contract, Ms. Banks accepted a three-month extension of her contract so as "to assist the OFS Director and Deputy Director in fiscal administration, financial planning, budgetary and forecasting [sic], relative to the reorganization of OFS and LSC." Two subsequent extensions continued Ms. Banks' services: from September of 1985 through November 5, 1985, and from November 6, 1985, through February 5, 1986. Ms. Banks' general duties remained the same. Before termination of the November 6, 1985, contract, however, Ms. Banks was reassigned to the Division of Administration to assist with budgetary administrative matters and a data processing task force. A further extension of her contract was superseded by the hiring of Ms. Banks as a regular employee, effective March 24, 1986. Ms. Banks then assumed the position of Deputy Director of the Office of Management Services. Her duties included responsibility for "planning, developing, analyzing, evaluating, budgeting, implementing and coordinating activities and operations related to the management of the Office of Management Services." Ms. Banks continues to hold this position, although she has been absent from work at LSC since June 17.

In support of each employment contract, as well as for the regular position to which she was appointed, Ms. Banks submitted essentially the same resume. 4/ Under the heading of background, her resume 5/ states:

> Pepperdine University, B.S./M.A. in Urban Planning, with a minor in Business Administration, 1972 Los Angeles, California (Required course work completed. Thesis pending).
>
> San Diego City College, A.A. in Computer Science, with a minor in Accounting, Business Administration, 1959.

4/ Ms. Banks also submitted another substantially similar resume in connection with her original contract in 1985 (hereinafter, "original" resume).

5/ Ms. Banks' original resume contains exiguous editorial variations which do not affect the substance of the document.

Moreover, in a deposition taken on July 24, 1985, by plaintiffs in Newman v. Legal Services Corporation, C.A. No. 84-3345 (D.D.C.), Ms. Banks testified

> A. I attended Pepperdine University. I enrolled in their extension program for adults which was a Bachelor--Master's program. I attended that over a period of oh, I think two years . . . . I completed the courses that were submitted, required of me. I in turn requested to attend their second extension program since this was a pilot program. They informed me that I would have to take fourteen additional hours in theology before I could receive my, quote, unquote, degree, because they were under a new program.
>
> I elected not to do that. I sold my thesis to HEW under a contract program for $25,000.
>
> Q. What was your thesis on?
>
> A. Women in business.

(Transcript at 6-7). Ms. Banks went on to attest that her thesis was published by HEW. 6/

In the course of his inquiry, LSC's General Counsel interviewed Ms. Banks several times in addition to speaking with her briefly on other occasions. Ms. Banks was asked for any available documents that would serve to support her resume. Ms. Banks submitted a September 10, 1973, letter from the Dean of Ethnic/Urban Studies and the Registrar of Pepperdine University. The letter is addressed to Ms. Banks and states, "After carefully reviewing your transcripts, it seems you will need a total of twenty-nine units to graduate with an undergraduate degree in Urban Studies." The required courses covered five subject areas; only four credits were needed in Religion. The letter noted that Ms. Banks was allowed 63 transfer units from previous studies and had earned 36 units at Pepperdine. The letter concluded, "If you have not done so, it is still necessary for you to apply for enrollment as an undergraduate student."

Subsequently -- and reluctantly 7/ -- Ms. Banks furnished student copies of her transcripts as well as an authorization for LSC to obtain official transcripts directly. The Pepperdine transcript indicates that she had accumulated a total of 36 credits from Pepperdine. Because Ms. Banks never

---

6/ LSC's request of HEW to search for this paper proved unavailing. In light of the lapse of time, HEW's inability to locate the work is inconclusive.

7/ Ms. Banks appears to have resisted the General Counsel's inquiry into her educational background. In Mr. Shea's initial interview with Ms. Banks, she asserted, as she had in her deposition, supra, that she had fulfilled all the coursework for her BS/MA, excepting a limited number of theology courses. On June 17, Mr. Shea met with Ms. Banks in the presence of LSC Personnel Officer, Sandra Hickey, and specifically asked for Ms. Banks' authorization to obtain her transcripts directly from the registrar's office. Ms. Banks declined to comply at that time.

advanced beyond the 36 units she had earned at Pepperdine, she continued to lack 29 units for a degree. The registrar's letter so indicated. 8/

Further examination of the Pepperdine transcript indicates that Ms. Banks was admitted to that school in early 1972 as an unclassified student. The term "unclassified" means that Ms. Banks was not in a program leading to the award of a degree. Her transcript indicates that Ms. Banks matriculated at Pepperdine in December of 1973. Yet, according to the transcript, the last courses Ms. Banks took were during the 1973 winter trimester. Ms. Banks, consequently, took no courses after she was enrolled and never pursued a degree program.

In sum, Ms. Banks lacked approximately one-fourth of the courses required for award of a bachelor's degree from Pepperdine. She never studied in a degree program; she certainly had no master's degree; and she cannot point to any occasion for production of a thesis. In fine, the resume Ms. Banks submitted in support of her consultant contracts and extensions, as well as for the regular position for which she was competitively selected, was substantially inaccurate. 9/

Other inconsistencies were similarly exposed upon closer inspection. Ms. Banks' resume declares that she was owner and president of Wanda J. Banks Associates, Inc., from 1970 to 1977. According to District of Columbia public records, Wanda J. Banks Associates, Inc., was incorporated in the District of Columbia on October 28, 1970, but its charter was revoked on September 8, 1975, because the corporation failed to file annual reports after 1973. The result was loss of the charter of incorporation. Ms. Banks also lists employment as president of Wanda J. Banks Contracting Corporation in San Diego, California, from 1970 through 1977. According to California charter office records, no such organization was chartered, although another corporation, WJB Associates, Inc., was formed in December of 1974 but suspended in 1976 by the California Franchise Tax Board.

8/ The San Diego Junior College transcript shows that Ms. Banks had there earned 63 credits. Combining those credits with the 36 credits later won at Pepperdine yields 99 credits. This sum is 21 units short of the 120 credits required by Pepperdine for a bachelor's degree. The difference between 21 and 29 is apparently attributable to required courses that were unfulfilled.

9/ The interview report prepared by LSC in connection with Ms. Banks' selection for the position of Deputy Director of the Office of Management Services clearly accepted Ms. Banks' representations. It noted: "Pepperdine University, BS/MA in Urban Planning." Significantly, the Position Announcement set out alternative minimum qualifications. They were: a graduate degree plus five years of specialized experience; or a bachelor's degree plus eight years of specialized experience; or twelve years of specialized experience. The interview form indicates Ms. Banks was considered as a graduate degree holder. Ms. Banks may well have qualified under the twelve years' experience criterion but that evaluation would have required careful assessment of the scope of duties in her prior positions. No such review was undertaken at the time of her appointment as it would have been superfluous. What is more, Ms. Banks' degree status may also have affected her rate of pay.

Because of the serious and unexplained discrepancies in her academic and professional qualifications, the Corporation is making arrangements to separate Ms. Banks from service with LSC. No determination need therefore be made as to whether Ms. Banks uttered the reprehensible declaration attributed to her. The evidence remains inconsistent: Ms. Banks has, of course, denied that she ever stated an intention to destroy the Corporation from within and specifically so swore in her 1985 deposition taken in Newman v. Legal Services Corporation, supra. Yet, another deponent in that litigation, Cassandra Jordan, also an employee of LSC, testified in an August 1, 1985, deposition in the same case in flat contradiction of Ms. Banks. Ms. Jordan likewise produced a memorandum, assertedly prepared by Ms. Jordan immediately after the alleged statement, which purported to summarize Ms. Banks' public declaration.

IV. Questions have been similarly raised about the proceeding brought by LSC to deny refunding to Antioch School of Law. In particular, mention has been made of the alleged "suppression" of a monitoring report said to be favorable to Antioch. Also cited have been purported legal deficiencies in pursuit of the administrative action.

Four monitoring visits were made to Antioch prior to the administrative action: in January of 1985; in June of 1985; in September of 1985; and in November of 1985. 10/ As all draft monitoring reports flowing from these four visits were first issued to Antioch for comment, no "suppression" can convincingly be alleged as to these documents. Neither did any irregularity attend use of documents generated by the latter two visits in 1985. The September visit regarding fiscal matters was conducted for LSC by a consultant, Agnes Pucher, and an LSC employee, James McIntyre. Ms. Pucher's individual draft report, as did those of other fiscal monitors, criticized Antioch for failure to separate accounts and for lack of evidence that budgetary matters were properly considered by Antioch's Board. Ms. Pucher also recommended that the program develop a manual for accounting policy and procedures. Yet, in certain other respects, Ms. Pucher found substantial compliance by Antioch. The November visit, which again focused on fiscal matters, was conducted by James McIntyre and LSC employee Kwesi Wood -- both of whom had performed earlier fiscal evaluations in 1985 -- and LSC employee Lee Payne. A fiscal report for the team was prepared by Mr. McIntyre who based his findings on both the September and November visits, but placed little reliance on Ms. Pucher's individual analysis. Mr. McIntyre's report was duly proferred to Antioch. Later, in discovery, Antioch was also furnished with a copy of Ms. Pucher's individual analysis. Additionally, Messrs. McIntyre and Wood submitted affidavits in the proceeding, testified, and were examined on their departure from Ms. Pucher's individual views. Thus, while Mr. McIntyre differed with Ms. Pucher, her

---

10/ As late as the latter half of 1985, the American Bar Association iterated its own concerns regarding Antioch's continued accreditation owing to deficiencies in academic standards, facilities, and finances. In November of 1985 the ABA Accreditation Committee had announced that it would grant no further extensions of time for Antioch to come into compliance with ABA accreditation standards and would recommend that the School's accreditation be withdrawn. See, e.g., the November 15, 1985, edition of Washington Times, at 10C.

views were not "suppressed" but, in fact, provided by LSC to Antioch for full inspection and subsequent use in public examination of LSC witnesses.

Certain misunderstandings may likewise have attended a procedural difficulty in the Antioch administrative hearing. This complication, though fully explored during the proceeding and satisfactorily resolved, may have caused a misperception of what occurred.

Lee Payne, an attorney in the Office of Monitoring, was a member of the last fiscal monitoring team to visit Antioch. Ms. Payne also contributed to the draft monitoring report issued in December of 1986. Subsequently, Ms. Payne served as hearing counsel for LSC during the initiation of the administrative proceeding. In the course of the proceeding, the prospect that Ms. Payne would be called as a witness became nearly certain. To avoid the ethical dilemma of testifying in a case in which she appeared as counsel, Ms. Payne properly withdrew and substitute counsel was appointed. Ms. Payne's withdrawal was entirely consistent with ethical and professional standards. Antioch claimed no prejudice or adverse consequences by reason of Ms. Payne's withdrawal in favor of substitute counsel. Neither did the presiding administrative law judge discern any impropriety or prejudice to either party on account of the change of counsel.

In sum, no irregularity or impropriety attended conduct of the administrative proceeding against Antioch, either as to procedure or as to substance. Counsel for LSC comported herself with complete propriety.

V. Questions were also posed as to whether B. Frederic Williams, Director of LSC's Office of Monitoring, Audit and Compliance, had, in the course of a large meeting with LSC staff, affirmed that lying to Congress was permissible.

Mr. Williams specifically and credibly denies having made any such statement and no evidence aliunde contradicts his assertion that he never made such a statement. On but one occasion was Mr. Williams present when LSC staff discussed the propriety of certain representations made by LSC officers to a prior Congress. Although strong sentiment was expressed in favor of the proposition that LSC officers had misrepresented material facts in response to Congressional queries, Mr. Williams resisted the contention that such misrepresentation constituted criminal activity or gave rise to prosecution for a criminal offense. An attorney in the Office of General Counsel who attended the session at which Mr. Williams was present and the issue was deliberated -- although he had himself urged a contrary position -- confirmed that Mr. Williams never asserted that lying to Congress was permissible. Rather, Mr. Williams' position, explicated at some length by reference to both facts and law, was that no prosecutable offense or actionable occurrence had taken place.

I have concluded that, at most, internal LSC deliberations have been misrepresented or garbled, and that Mr. Williams' defensible interpretation of the legal sufficiency of past Corporate submissions to Congress was grossly mischaracterized.

VI. Senate staff has questioned whether LSC supervisors and hiring officials may have encouraged (or suffered) applicants for employment with the Corporation to alter their resumes in order to disguise background information. A possible example of the challenged practice, drawn from two documents, has been submitted to the Corporation. In addition, representatives of the National Legal Aid and Defenders Association have, in a spirit of cooperation, provided LSC with other instances of what appears to be abridgement of resumes which were at least tendered to Corporate hiring officials.

Indications that applicants' resumes have at some point been foreshortened were confirmed by a number of LSC managers and employees who openly acknowledge that from time to time resumes have been permitted, and, on a few occasions, even encouraged, to be revised. LSC's Personnel Office has likewise substantiated that limited revision of resumes by applicants has been fairly common. What appears further, though, is that the practice of redaction is confined to those aspects of resumes which identify social, religious, political, and similar associational affiliation, and to those instances of hiring where individual program offices, rather than LSC's Personnel Office, first receive resumes. LSC's Personnel Office does not permit any revision of a tendered resume. In effect, then, only temporary and contract positions for which public postings are not used have presented the opportunity for editing of resumes submitted in support of application for employment.

While redaction of resumes may have occasionally occurred in other offices, LSC's Office of Monitoring, Audit and Compliance, which necessarily undertakes far more hiring of applicants on temporary or contract footing than any other LSC office, appears to furnish the principal occasion of such abridgement. Significantly, Monitoring, Audit, and Compliance officials have not sought to disguise or deny the practice of affording applicants the opportunity to condense or revise a curriculum vitae. Instead, they have willingly offered explanation for their actions. One monitoring official, for instance, observes that when he interviews candidates, as a matter of course he advises them of the prospect that their resumes may be obtained by the public under the Freedom of Information Act. 11/ In instances he considers appropriate, he may specifically refer to social, religious, or political affiliations noted by applicants. His stated purpose is to ensure that a strictly "professional" resume, shorn of surplusage or irrelevancies, be submitted. Further, on rare

---

11/ The Freedom of Information Act, 5 U.S.C. Section 552 is made applicable to LSC by 42 U.S.C. Section 2996d(g). Requests for information under FOIA -- including resumes of LSC personnel -- are regularly submitted for response to LSC's Office of General Counsel. Consistently with the terms of FOIA, and in express recognition of the case law, redacted resumes of LSC employees are supplied to requesters. Typically excluded from resumes otherwise afforded requesters are such personal data as home address, marital status, religious affiliation, condition of health, references, and salary requirements. Guidance for redaction is provided by the Department of Justice and its guidelines are observed by LSC. Nonetheless, access to information contained in employee personnel files is determined solely by LSC and its decision to release some or all of the contents of a personnel file cannot be blocked by the submitter of the information. See, e.g., Chrysler Corp. v. Brown, 441 U.S. 281 (1979). In other words, once an applicant for employment has provided LSC with a resume, all control over its circulation to the public has been unconditionally surrendered to LSC.

occasions, he may even specifically recommend that a resume regarded as non-professional be revised to assure that irrelevant material not be injected into the hiring process. At the same time, hiring officials have emphasized that even though an applicant's partisan preferences were not considered, a candidate's views as to the proper role and function of LSC were deemed to be a proper consideration in the hiring process.

Two documents supplied by your staff suggest that on March 14, 1987, Mr. Gomes referred the resume of an applicant to another LSC staff member for purposes of interviewing the applicant for a position as consultant to the Monitoring Division. On the routing slip accompanying the applicant's resume, Mr. Gomes noted, "If recommendable, his resume needs re-doing." Mr. Gomes has recognized that he may occasionally ask that resumes be revised to delete impermissible or irrelevant matter, such as political affiliation. Mr. Gomes explains that because he never considers a candidate's political affiliation, he will usually request that such information be deleted. Not inconsistently, Mr. Gomes deleted from the candidate's resume obvious indication of his partisan affiliation, viz., "Furman College Republican Executive Committee," while leaving intact manifest references to the applicant's philosophy of government, e.g., "Chairman of Furman [University] Young Americans for Freedom . . . . YAF National Director, 1981-1983"; "Washington Internships, Congressman Floyd Spence, Senator Strom Thurmond, Summer, 1979." 12/

Besides hiring officials, administrative personnel within the Office of Monitoring, Audit, and Compliance have affirmed that redaction of resumes is not uncommon and that abridged resumes have, on rare occasion, been expedited by retyping at LSC offices. Finally, various members of LSC's staff have indicated that for purposes of employment with LSC, they have redacted their resumes to reduce or eliminate reference to religious or political affiliation.

What has been revealed by the General Counsel's inquiry is an irregularly implemented practice, largely confined to a single office, which has resulted in redaction of limited associational information from the resumes of temporary employees and consultants. What is disturbing is that such practice, unnecessary at best, should appear to contravene, rather than to promote, the unmistakable provision of 42 U.S.C. Section 2996.d(b)(2): "No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnnel action with respect to any officer, agent, or employee of the Corporation." While the practice of accepting abridged resumes was forthrightly acknowledged and plausibly defended by staff as advancing at least one of several competing objectives, it is too susceptible of misunderstanding not to be prohibited. The practice may even be counterproductive as it surely can suggest that personnel action has been taken on the very basis sought to be eliminated by redaction. Additionally, LSC compliance with FOIA may be compromised if an undisclosed earlier version of a resume remains extant.

Because, in sum, the editing of resumes -- however well intentioned or well motivated -- constitutes at least the appearance of impropriety, I am forthwith directing that LSC's

---

12/ Ultimately, the applicant here cited was not hired.

Office of Personnel assume total and exclusive control of each application for employment with the Corporation and that the Office of Personnel, in conjunction with the Office of the General Counsel, ensure no alteration or substitution be hereafter made in respect of any submission, *e.g.*, curriculum vitae, resume, or letter of application, from an applicant for employment with the Corporation. Included within this directive are, of course, prospective regular employees, temporary employees, consultants, and agents of any kind. Violation of this prohibition on redacting resumes, or causing them so to be edited, must constitute grounds for the imposition of serious sanctions, including discharge from employment with the Corporation.

While LSC's response to the concerns you have raised has been slow and deliberate, I know that you will recognize it to be conscientious and thorough. Our hope, like yours, is that by accounting for its policies and defending its practices, as well as by conceding and correcting its deficiencies, LSC will help strengthen its ability to advance the effective and efficient provision of legal services to needy members of our communities.

Very truly yours,

John H. Bayly, Jr.
President

Letter From Michael B. Wallace

September 21, 1987

The Honorable Warren Rudman
United States Senate
530 Hart Senate Office Building
Washington, D. C. 20510

Dear Senator Rudman:

As you will recall, I did my best to represent our Board of Directors at the Subcommittee hearings for this year's appropriation for the Legal Services Corporation. As we discussed at that time, the very structure of the Corporation tends to impede our relations with Congress. Because we are governed by a multi-member Board which can act only when convened pursuant to law, no single director may speak for the Board, any more than any single Senator can speak for Congress. Thus, neither I, nor our Chairman, nor our President can commit the Corporation to any course of action, and I fear that this inability has been the source of much friction. Nevertheless, at the hearing I made commitments to the Subcommittee of a personal nature, and I believe that I should give you a personal report as the Subcommittee prepares to take up our appropriation.

At the hearing, I implored the Subcommittee to approve our new lobbying regulation, so that we might end the anomaly of having a binding regulation on the books which the Corporation lacked funds to enforce. As a result of last year's legislation, we entered into negotiations with counsel for some of the organizations representing some of our field programs. Although neither party is ever completely happy with the compromise, I have no reason to think that those organizations have retreated from their commitment to accept the new regulation, which, with the Subcommittee's approval, is now fully binding and enforceable.

The only concern you expressed to me at the hearing had to do, not with the merits of the regulation, but with the constitutionality of its restrictions on the use of private funds. Mr. Bayly has fully described the outcome of the Board's later deliberations on that subject in his letter to you of September 14, 1987. In light of the admission of counsel for the field organizations that our regulation is no more unconstitutional than §1010(c) of the Act itself, I can see no basis for the Board's abdication of its duty to enforce both the Act and the regulation. I urge the Subcommittee to provide funds for the discharge of that duty in the coming year.

I also committed to you at that hearing that I would seek an investigation of any evidence you would bring to our attention supporting your charges that our staff engaged in political activities designed to defeat you during your re-election campaign last fall. I believe the activities discovered by Mr. Bayly and described in his letter to you of September 9, 1987, to be entirely appropriate communications with the press and the public. If you have any evidence of an effort by our staff to defeat you, I beg you to bring it forward, so that we may discipline those individuals who may have acted improperly, and so that the rest of our staff may have their names cleared. If you have no such evidence, then I believe you should withdraw your charges in the same forum in which you made them, a public meeting of the Subcommittee.

Part VI of Mr. Bayly's report, however, deals with issues which you did not raise at the Subcommittee hearings. I asked Mr. Bayly to bring to our last Board meeting the staff members involved so that they might explain the documentary evidence you provided to us. Mr. Bayly, with the concurrence of the Chairman, declined to do so. For that reason, I regret that I can neither agree nor disagree with the conclusions presented to you in that portion of Mr. Bayly's report.

Finally, you and I agreed at the hearing that the Corporation ought to be a federal agency like any other, but so far the Labor Committee has shown no interest either in reauthorizing the Corporation in its present form or in amending the Act to reconstitute us as an agency. As your Subcommittee seeks to appropriate, then, it must refer to the original intent of the Congress that adopted the Act and the President who signed it. They intended that a Board appointed by the President should have substantial discretion to govern the Corporation within the broad authority granted by the Act. Seven years into this President's administration, neither side has been able to amend the original Act in any way. I firmly believe that it is time we returned to the original and unchanged agreement that gave this Corporation its very existence. I urge the Subcommittee simply to appropriate such funds as you may deem proper for purposes envisioned by the Act, and to let the Board faithfully discharge the powers it was intended to have.

I thank you again for the courtesy shown to me in May, and you have my best wishes as you proceed to the discharge of your duties.

Sincerely,

Michael B. Wallace

Michael B. Wallace

MBW:lc
cc: Members of the Board of Directors
Mr. John Bayly

Senator RUDMAN. Mr. Uddo.

Mr. UDDO. Senator, I appreciate the opportunity to be here. I have never participated in these hearings before, and frankly didn't intend to this time until the action that the Board took last Friday in Santa Fe. I was not at the meeting, I participated by telephone. Frankly, I was taken aback by the Board's decision to not only revisit the budget, but to reduce the budget request to $250 million.

I felt strongly enough that over the weekend, I thought a lot about it, and when I realized that this hearing was this week, I decided that I would like to be here just to say briefly to this subcommittee what I said to the Board, and to reiterate my opposition to what the Board did and some of my reasons for it.

Senator RUDMAN. Staff informed the committee of your telephone calls and your passionate requests to appear here.

Mr. UDDO. I pushed strongly.

Senator RUDMAN. Knowing you and your reputation as a scholar, we thought that we should allow you to come here.

Mr. UDDO. I appreciate that. But it is also the reason that I don't have a prepared statement because it was sort of a last minute decision on my part to try to do it.

BUDGET REDUCTION DECISION

I think the decision to go back and revisit the budget and reduce it in line with the White House request is a terrible decision. I think it is the kind of decision that causes the Board to be criticized for acting without a basis for its actions. I have been on both sides on a number of issues with this Board, in the years that I have been on the Board. I don't think that I fit into any one particular ideological mode and I think that my votes would reflect that.

This decision particularly disturbs me because I think it invites the criticism that the Board is not independent, which is a criticism that I am sensitive to, and I think we should be sensitive to. In addition, it invites the criticism that the Board does not carefully consider some of its decisions, or many of its decisions.

I participated in the entire debate on this particular vote by phone, and I heard nothing that gave a factual basis for making the determination that the one vote majority of the board made. I still haven't. I have read Mr. Durant's statement that he submitted to this subcommittee, and I still don't see any justification for it. I think that that in and of itself is reason for criticizing the decision of the Board.

We have a budget process. It takes a number of months. There is a lot of careful consideration. There is a lot of input. We get higher requests than we end up approving, and we get lower requests. I think the budget that we ended with was a compromise, so I disagree with my good friend Mr. Wallace who refers to this as a compromise.

I don't think we should be in the business of compromising on this particular point because the original negotiation process with requests from the field and a number of sources is the process of trying to reach some sort of a compromise budget that people can live with. I think that we have already compromised in the $305 million figure, and that this decision can't be justified as some kind of a compromise.

I welcome the White House's change of heart about funding Legal Services. I think that it is an encouraging sign. I think some of what the White House budget suggests in terms of reforms or looking at different things to do with Legal Services are good.

I think that some of them have been recommended by the Board before, and I think that it is good to know that the White House has endorsed those proposals. But to suggest that because the White House has decided that those are some things that are fundamentally good and should be looked at, that we have some sort of an obligation to embrace that $250 million figure, I think is just wrong.

Frankly, I take a completely opposite view than apparently some people do. I think a decision like this is embarrassing to the President.

I think the President appointed some intelligent people, some hopefully independent thinking people, people who are going to make the best judgments in the best interest of the Corporation that they have been appointed to govern.

To backtrack and undo our budgetary process, and to make a decision like this without any record that justifies the change, I think is embarrassing to the President because I think it makes it look like maybe he didn't appoint a group of intelligent, independent thinking people. I don't think that that is the case, but that is the appearance that it gives.

I just want to be here, and I want my presence to emphasize that on this particular point, I think the action is irrational. I think it is unjustifiable: there is no record to support it. I think that the Board has made a grave mistake in even going back and reconsidering the budget mark.

I think there was a way to welcome the White House's input, without going back and making it appear that our whole budgetary process has no substance to it, that it can be changed at any given moment, without any substantial justification for changing.

I think too much time and effort, and blood, sweat and tears, goes into the budgetary process to be able to deal with it that arbitrarily. I think this was an arbitrary action.

Since Mr. Durant is now here, I will say again that having read his statement, I don't see any justification in his statement for the action. I don't think that he has yet given any substance to the decision. I think that it remains an indefensible decision. I just wish that he had gotten a chance to go first because I would have liked to talk after him.

[General laughter.]

LETTER FROM NORTHERN NEW MEXICO LEGAL SERVICES, INC.

Senator RUDMAN. As a follow-on to your comments regarding the meetings in Santa Fe, the subcommittee has received a letter from Clark de Schweinitz of the Northern New Mexico Legal Services, Inc., with regard to Legal Services Corporation. The letter will be printed in the record at this point.

[The letter follows:]

NORTHERN NEW MEXICO LEGAL SERVICES, INC.
Administrative Office
P.O. Box 5175
805 Early Street
Santa Fe, New Mexico 87502
(505) 982-2504

March 29, 1988

Dorothy Seder
Staff of Senator Hollings
Subcommittee on Appropriations
Commerce, State Judiciary
and Related Agencies
U.S. Capitol - U.S. Senate
S. 146
Washington, D.C. 20515

Dear Ms. Seder:

I was informed that you receive communications for this subcommittee. The enclosed letter was written by the chair of Northern New Mexico Legal Services, Inc. and approved by our Executive Committee on behalf of the full Board.

The chair asked that I send it to your subcommittee as it hears testimony on the Legal Services Corporation budget.

Sincerely,

Clark de Schweinitz
Executive Director

CdeS:vea
Enclosure

PO Box 56
Dixon, NM 87527
March 25, 1988

Chairman, Sub-Committee for the Legal Services Corporation
United States Senate Office Building
Washington, DC

Dear Mr. Chairman:

I have just come from a Board of Directors meeting of the Legal Services Corporation held in Santa Fe earlier today, which meeting I attended as an observer and as Chairman of the Board of Northern New Mexico Legal Services, on whose behalf I am writing this letter.

At that meeting the LSC Board approved President Reagan's FY 1989 proposed budget request, which if adopted by Congress would cut more than $50 million from the program.

In my view, no coherent rationale was offered by the Board in offering such a recommendation. Indeed, it is difficult to know what to make of an LSC Board that appears to pay so little heed to the real needs of the field programs, which were expressed eloquently and repeatedly at the meeting by various representatives of field programs, support groups, and groups involved in the study of poverty in New Mexico and the United States.

Many of the measures that the Board seemed to hold of value, such as functional accounting and time-keeping, a voucher system, and so on, are not inherently wrong for the Legal Services program and might well be entirely appropriate in a situation in which poverty in the United States was on the verge of extinction. To be obsessed with such measures at the present time, however, when quite the opposite seems to be the case, indicates that the majority of the LSC Board is willfully out of touch with a reality which it is their responsibility to be on intimate terms with: the existence of more than thirty million people living in poverty in the United States, relatively few of whom can be reached with even the current level of LSC funding.

I found it particularly disturbing to witness the inept and amateurish proceedings of a board charged with the disposition of some $300,000,000 in public funds. The Board Chairman, Mr. Clark Durant III, conducted the meeting according to no apparent rules of procedure, and though such may well be his privilege his laxity here certainly suggests that he does not have at heart the orderly and efficacious administration of the program which he is in theory responsible for, and that further he generally lacks the experience and wisdom such a position as his would presuppose.

The United States Senate, sadly, must bear the responsibility for having confirmed those LSC Board Members who are, to my view, acting in bad faith in relation to the will of the Congress. The behavior of LSC Board Members Durant, Wallace, Mendez and Bernstein in particular cannot but have a demoralizing effect on those members of the legal profession who work for the many local programs, as well as on those many volunteers who serve on local Legal Service boards.

I urge you in the strongest possible way to disregard the budgetary recommendations of the LSC Board of Directors, and to place their decisions and actions under the closest scrutiny.

Respectfully yours,

Stanley G. Crawford
Chairman, Board of Directors
Northern New Mexico Legal Services

ALTERNATIVES TO STATE AND NATIONAL SUPPORT SERVICES

Senator RUDMAN. Professor Uddo, you chaired a special subcommittee, at the request of the Board last year, as to alternatives for providing State and national support services. We were very interested in that assignment because, obviously, you have some credentials and the committee was interested.

My understanding is that you have not yet completed all of your inquiries and you have not filed a formal report. Is that correct?

Mr. UDDO. That is correct, Senator Rudman. As far as I can tell that subcommittee doesn't exist any more.

Senator RUDMAN. The problem we have, and tell me if I am right or wrong, a subcommittee was appointed, and you chaired the subcommittee, who was on the subcommittee besides yourself?

Mr. UDDO. I believe Ms. Miller and Mr. Valois were on the subcommittee.

Senator RUDMAN. You were charged with doing a study and reporting back to the full Board as to this whole issue of national and State support centers, which this committee is perfectly willing to consider based on evidence, not based on instinct, ideology, or the temperature at 8:00 o'clock in the morning in St. Louis or Detroit. We are particularly interested in what you come with.

Am I to understand that you were given this responsibility, and you started doing it. You have not filed a report. Yet, the action that you were evaluating to determine what choice the Board should make has now been made. Is that accurate?

Mr. UDDO. Yes, I think that is accurate. In fact, Senator, that is the reason I think the subcommittee doesn't exist any more.

Senator RUDMAN. What month was the first decision to defund?

SHIFT IN FUNDING

Mr. UDDO. In October of 1987, the Board, much to my chagrin, put on the agenda the question of shifting the funding from National and State support to direct delivery.

Senator RUDMAN. How many months did that occur after the time that you were charged with your particular job?

Mr. UDDO. Our subcommittee was appointed, I believe, in January or February, and the first hearings that we had were in March of 1987. From March to October, we had another round of hearings in August of 1987.

Senator RUDMAN. When was your report due?

Mr. UDDO. There was no date for it, but I had assumed that I would have at least a year, because I thought that it would take at least that much time to do a good job of it.

Senator RUDMAN. In other words, that project is now over with.

Mr. UDDO. As far as I am concerned, it has been mooted by the Board's action.

I would like to say, for the record, Senator Rudman, that I think that that subcommittee would have recommended some thoughtful and justifiable changes in the structure of National and State support. I think some people may have suspected that it was not going to say anything worth hearing, or that it was not going to propose any changes. In fact, this is not the case. I think if the subcommittee had had a chance to run its course, it would have made some thoughtful, defensible suggestions about how to improve support services.

Senator RUDMAN. Looking at your voting record on the Board, since you have been on the Board, I certainly had no inkling you were going to necessarily side with the minority of the Board on that issue. Your voting, for a long time, has been with the majority of the Board.

Mr. UDDO. That is right.

Senator RUDMAN. I assume that what you are telling me is that it was your rationale that at some point there would be a restructuring of State and National support for reasons that you thought you could justify after hearings.

Mr. UDDO. That is right.

Senator RUDMAN. But now we don't have that evidence.

Mr. UDDO. That is right, and as far as I am concerned, I am not undertaking any further activities.

Senator RUDMAN. So the people from the legal services community come to us and say that it is a terrible idea, don't do it, and they tell us why not to do it, then we are left in a position of either maintaining the status quo, because we don't have any evidence, or changing it, which we are unlikely to do because we don't have evidence. In fact, the action of the Board, in many ways, has probably harmed their ability to do what they may think is right and may well be right, because they don't have your committee report to base it on.

Mr. UDDO. I think that this is exactly accurate. It was my argument to the Board when they decided to bring this up on that agenda in October, that it was premature and was going to defeat any attempt to rationally restructure support services.

Senator RUDMAN. I am going to try to come back to everybody with questions. We have some time constraints here, because we have a Budget Committee hearing, which is why I am chairing this morning. The chairman of the subcommittee is, unfortunately, at the Budget Committee and I am supposed to be there also.

I am going to skip and come back to you, Chairman Durant. Mr. Eaglin.

Mr. EAGLIN. Yes, sir.

MINORITY BUDGET

I am Paul Eaglin. I am from Wilmington, NC, where I work as Assistant to the Chancellor for Legal Affairs, and I also teach in the Cameron School of Business there.

In late fall, at one of our Board meetings, I was the sponsor of what is now referred to as the minority budget, which you have a copy of in the paper which I presented to you, and it calls for changes from the budget laid out by Congress only in three items: basic field programs, Native American programs, migrants programs and components. We called for increases in those areas.

The budget that I proposed totaled $333 million. The reason that we were able to come up with this is that finally we were able to get together the two client Board members to cooperate with other Board members to come up with five. We were outnumbered. We lost six to five in our attempt to seek an increase from Congress in our budget mark.

I feel very strongly about the three items for which we proposed increases, since I have experience as a staff attorney. Ten years ago, I worked at Legal Services in Winston, NC, where I was paid approximately, if I recall correctly, about $14,000 annually. I noticed in bar publications that I receive now in North Carolina, the Legal Services programs still are advertising starting attorneys at little more than that, roughly $16,000, after 10 years.

The budget marks proposed by the Corporation and the majority of the Board for the last several years has had an impact on that. I think that it is unjustified and unfair to staff attorneys still to start at such a low rate as that. I know that it has an impact on staff attorneys.

I know that it has an impact on clients as well. Our own client Board members tell us that. They feel very strongly that the programs around the country need the increases in order to serve the clients properly. We hear that from our client Board members on our Board.

I hear it from client members and groups that I speak to around the country. We hear it from the programs. I feel very strongly that there is a need for increase in the basic field programs.

FUNDING FOR NATIVE AMERICAN COMPONENT

It is vital also to the legal services delivery system that the Native American component be properly funded, and the migrant program as well. So we call for increases in those areas as well. The information that I thought was most reliable was figures provided by representatives of field programs themselves. Those figures were figures used in the budget proposal, the budget mark that we gave here.

I am concerned also that—at least the argument has been made repeatedly—that the reason or rationale for maintaining a budget mark of $305 million, or indeed for reducing it to some lesser figure, is that volunteerism will fill the gap, or other funds will fill the gap.

VOLUNTEERISM IN NORTH CAROLINA

Just yesterday, I believe it was, I received a newsletter which contains a news item indicating that the president of the North Carolina Bar Association, Mr. Poe out of Charlotte, is having a 2-day meeting of bar leaders in North Carolina on several major topics. One of the most important topics is the need to increase volunteerism in North Carolina. Perhaps you might want to include it in the record.

Senator RUDMAN. It will be printed in the record at this point.

[The newsletter follows:]

NEWS BEAT

Legal Services of North Carolina

Justice For Poor People

Contact:

919/832-2046

Friday, March 25, 1988

THE LEGAL SERVICES CORPORATION BOARD IS MEETING TODAY IN Santa Fe, New Mexico to consider reducing its request to Congress for funds in FY 89 from the $305 million approved earlier to the $250 million requested by President Reagan. As reported earlier, this is the first time in eight years that President Reagan has requested any money for Legal Services. In other business, the Board will discuss its proposed new regulation preventing a Board member of one Legal Services recipient from serving on another. Even if passed, this would not prevent double service on LSNC local program boards as LSNC is one recipient.

THE NORTH CAROLINA STATE BAR AND ITS PRESIDENT JAMES PRESTON recently hosted a two day conference of representatives of the state's largest law firms examining the problem of growing work pressures preventing time for civic time and personal activities, the limited employment of minority lawyers in large firms and the crisis of representation in death penalty cases. This group expressed commitment to increased participation in public service involvement and representation of the poor; active recruitment of minorities into firms; assuring representation in death penalty cases; and a conscious effort to assure practice flexibility and quality of life within the practice of law.

RON HALPERN HAS BEEN HIRED AS EXECUTIVE DIRECTOR OF CENTRAL Carolina Legal Services in Greensboro. Ron has previously served as director of Legal Services programs in Dayton, Ohio and St. Petersburg, Florida. More recently he taught law and directed the legal clinic at Stetson University College of Law in St. Petersburg. The Central Carolina Legal Services' Board is having a reception for Ron at 4:30 Monday, March 28 at the Greensboro office.

THE FAYETTEVILLE BRANCH OFFICE OF LUMBEE RIVER LEGAL SERVICES spent this week recovering from a crisis. In the wee hours of Friday, March 18, homeless people trying to get warm in an adjoining building started a fire which severely burned the office. The Legal Services program had to relocate in the board room and reception area of United National Bank across the street. They hope to be back in their office with working phones, working typewriters, new carpets and fresh paint by Monday. Lumbee River would like to thank Bank President Leonard Hedgepeth and his staff for their many efforts to minimize the disruption in the work of the program during the crisis.

Mr. EAGLIN. We have a terrific statewide program in North Carolina, headed by Dick Taylor. Then apart from the statewide program, we have three independent programs. The bar association and the lawyers in North Carolina support legal services regardless of their political ideology, yet the Bar Association President of North Carolina is conducting a meeting, one of the major topics of which will be the need to increase volunteerism, because the need to serve poor persons is not being met in North Carolina.

IOLTA FUNDS

We have IOLTA. We have contributions of funds from IOLTA. It is not enough. There is a need for us as Board members to come before Congress, to lay before you the need for increases in basic field programs and several of the special programs.

I think that we can do well with respect to the other line items. We can live with what Congress allocated to us last year. But I think in those three major areas, these are important areas, the clients feel strongly about in terms of the delivery system, we need increases there.

CLIENT/CORPORATION CONTRACT

I would also like to point out that the clients felt very strongly about the need for increased client/Corporation contact, to increase the training of clients. Because of that, a new line item was proposed, client support, in the amount of $1,700,000, or just a little over.

The idea there was to train client Board members of local programs at Corporation expense. I think if you consider that there are approximately 1,300 client Board members in local programs around the country, it would work out to just over $1,000 per client board members in terms of cost annually. I think that it is a reasonable amount.

I know, from the figures that we have, that we accumulated as Board members on our travels to meetings and so forth, that is a reasonable figure for a one-time, annual training session for client Board members.

Our own client Board members tell me that they feel inadequate at some of our Board meetings. They are not sure of parliamentary procedures. They are not sure of the proper approach to budget analysis. There is a need for client Board member training around the country, and I think that a figure of $1,700,000-plus would be an adequate figure to train client Board members at Corporation expense so that they can contribute much better than they have been able to in the past.

Those are the highlights of my rationale for proposing a minority budget. I am quite sad that it did not gain more support than it did. I am thankful that you have permitted me to come here to speak about it.

Senator RUDMAN. We are glad to have you here this morning, Mr. Eaglin.

(The prepared statement of Mr. Eaglin follows:)

STATEMENT OF PAUL B. EAGLIN
MEMBER OF THE BOARD OF DIRECTORS
THE LEGAL SERVICES CORPORATION AND ITS
COMMITTEE ON AUDIT AND APPROPRIATIONS

Good morning. Mr. Chairman and members of the subcommittee. It is my privilege to appear before you today to speak to the issue of the FY1989 budget for the Legal Services Corporation. I am honored to have the opportunity to meet with the body of officials who have worked for so long to preserve the effective delivery of quality legal services to the indigent of our land.

I am Paul Eaglin, a member of the Board of Directors of the Legal Services Corporation, and one of the members of its Committee on Audit and Appropriations. I have served as a member of the board of directors since my recess appointment to the board in the Fall of 1984. I am employed at the University of North Carolina at Wilmington, where I serve as Assistant to the Chancellor for Legal Affairs and as a member of the faculty of the Cameron School of Business.

The board of directors considered the issue of the corporation's FY1989 budget at its December 1987 meeting in Charleston, South Carolina. At that meeting, I proposed to my colleagues a budget mark and allocation that I am here to describe to you today.

As proposed, the budget mark and allocation were as follows:

LEGAL SERVICES CORPORATION

PROPOSED FY1989 BUDGET MARK

I. DELIVERY OF LEGAL ASSISTANCE	
A. FIELD PROGRAMS	
1. BASIC FIELD PROGRAMS	$275,591,000
2. NATIVE AMERICAN PROGRAMS	$ 9,209,230
3. MIGRANT PROGRAMS & COMPONENTS	$ 12,944,010
B. PROGRAM DEVELOPMENT (INCL. LAW SCHOOLS)	$ 1,339,000
C. SUPPLEMENTAL FIELD	$ 1,000,000
II. SUPPORT FOR THE DELIVERY OF LEGAL ASSISTANCE	
A. TRAINING & TECHNICAL ASSISTANCE	
1. TRAINING DEVELOPMENT & TECHNICAL ASSISTANCE	$ 376,000
2. REGIONAL TRAINING CENTERS	$ 624,000
B. OTHER SUPPORT	
1. NATIONAL SUPPORT	$ 7,529,000
2. STATE SUPPORT	$ 7,843,000
3. CLEARINGHOUSE	$ 865,000
4. COMPUTER ASSISTED LEGAL RESEARCH REGIONAL CENTERS	$ 511,000
5. CLIENT SUPPORT	$ 1,715,000
III. CORPORATION MANAGEMENT & ADMINISTRATION	$ 10,700,000
	$330,246,240

My proposed budget mark failed to win the support of a majority of the board, losing narrowly by a vote of 5 - 6. Support for my proposal came from my colleagues Mr. Smegal, Professor Uddo, and the two client members of the board, Ms. Benavidez and Mrs. Miller.

I should note that an amendment to my proposed allocation of funds increased the allocation to Basic Field programs by $5,433,240 [for a total of $281,024,240 to Basic Field] . That increase of funds allocated was taken from the Native American line and the Migrant Programs & Components line, leaving them essentially restored to their amounts in the current FY budget. Nevertheless the total budget mark remained the same.

The FY1989 budget mark that I proposed for my colleague's consideration did not originate solely with me. I was proud of the fact that it resulted from the collaboration of both our client board members. Ms. Benavidez and Mrs. Miller. with the other members of the minority viewpoint. The significance of this point should not be missed. Since the beginning of our service on the board. this marked the first occasion when the consideration of a budget mark garnered the support of both client board members. Moreover. the allocation of funds within the context of the overall mark was the specific product of the clients' concerns. I was privileged not only to offer them my support but to be permitted. at their request. to make the proposal to the board of directors.

The facets of our proposed mark are uncomplicated. No doubt you will recognize immediately that most of the line items propose sums of money equal to the specifications of the Congressional conference report for this fiscal year. We retained those amounts to indicate not only our endorsement of Congress' continued support and concern for those areas. but to show our appreciation as well for the provision of legal services funding for many programs. such as national support.

This committee knows well that the majority of the board of directors chose to revise the format of our corporate budget last Fall to indicate its intent to discontinue funding for some services. I did not support the revision, do not support it now. and I am sure that the others in the minority do not favor it. Thus. the proposed budget mark that I submitted provided funds for National Support and State Support. even as it continued funding for Migrant Programs and Components. Computer Assisted Legal Research and other technical and training assistance.

While retaining the budget format clearly favored by Congress. and using the Congressionally specified amounts as the starting point in our allocation of funding for activities, the proposal of the minority of the members of the board of directors sought additional funding for Native American programs and Migrant Programs and Components. I proposed a new line item, Client Support, at the specific behest of the two client board members and in response to the continued pleas by client groups for participation in the decision-making processes of this corporation.

For several years now, our meetings have been attended on occasion by groups of clients from around the country who pleaded for increased communication between the corporation and clients as a whole. They cited the ever-present need for training of clients who serve on the board of directors of local programs. Some clients who serve on local boards described the daunting sense of responsibility of serving without adequate preparation in the skills of parliamentary procedure, review of program budgets and audits, and analysis of the range of issues presented to a local program's board of directors. In short, they felt left out; in the dark; "out of the loop" despite that they were at the same table in the same room with their colleagues who are attorneys or other professionals.

The proposal for $1,700,000 is a modest sum to allocate for such a worthy purpose. I estimate that approximately 1,300 clients serve on local boards. Grant Year 1987 refunding applications revealed that 3,811 attorneys served on local boards, so one can estimate that client board members numbered roughly one-third the number of attorney board members. Thus, the amount proposed for Client Support would represent an average per capita cost of roughly $1,300 to accomplish the following:

- to train each client board member in the execution of his or her fiduciary duty;
- to reimburse clients for their costs in traveling to the training site/s and for their per diem costs while there;

to finance the continued costs of communication between the corporation and the client board members.

To expand on the latter concept: for some time, LSC's client board members have sought to establish a direct line of communication between the corporation and the clients. One of their ideas involves the installation of toll-free "800-" AT&T telephone service so that interested clients may contact the corporation directly. The prospective cost of this service is included in the amount proposed for Client Support.

I cannot stress too greatly the value of informed comment and active participation by client board members. After three years of service on this board, I realize keenly that clients at the local level are concerned about their status with the national board of directors, whether their concerns are taken into account and, most importantly, how their client colleagues on our board are regarded as effective representatives of their interests.

Ms. Benavidez and Mrs. Miller are quite correct in taking the position that the sum of $1,700,000 [or $1,300 per capita for client board members nationwide] is a modest amount to expend to insure the effective participation of clients as members of the board of directors of local programs. Indeed, they cite their own experience as proof of the importance of training to understand and to serve well on a board of directors. While they must be more directly concerned with the corporation's relationship with the legislative branch, and local clients will experience that only indirectly, the concern is one of great importance and should be addressed in a program of training for client board members.

The budget mark of the minority also proposed, in its original formulation, to increase funding for the Native American line item and to maintain a line item, and increase funding for, Migrant Programs and Components. I am thankful that Congress continues to recognize the special needs of migrants by its specific allocation of funds in the LSC budget. Maintenance of legal services delivery specially to migrants by discrete programs is critically important. Similarly, the Congress has continued to recognize the special conditions of Native Americans and has been protective of their customs and distinct legal systems. I join the clients on our board of directors in recognizing the need not only to provide continued funding for those programs but to increase the funding to insure their needs are met.

Our board has heard repeated presentations regarding the unmet needs of migrants and the unstinting efforts of our special components to serve this element of our population. However, the majority of our board has been warmly receptive to unfounded criticisms of efforts to serve the legal needs of migrants and to protect that population from some unscrupulous employers. Studies purporting to downplay the dimensions of the challenge have been attempted. Growers' criticisms have received extensive hearing on repeated occasions at our meetings. All board members have had the opportunity to consider the same presentations and to draw conclusions from them. I join my client colleagues in concluding that the need for legal services for Migrant Programs and Components can begin to be addressed by the amount proposed, $12,944,010, which is an amount that originates from those who are in the field, who are daily confronted with the legal needs of the migrants, and who are familiar with the challenge. Of course, my colleagues in the majority do not favor funding the Migrant Programs and Components separately, preferring that service to this discrete class of clients come from local priority setting by programs. Happily, Congress has not seen fit to permit this drastic change, and has not been persuaded by studies that purport to show the diminution of the challenge of serving clients.

The special needs of Native Americans also is recognized in the budget mark of the minority of the board by a proposal to increase funding for that line item. One of the earliest studies presented to me and the others on the board demonstrated the enormity of serving the legal needs of Native Americans:

(1) the distances required to be traversed by attorneys and paralegals engaged in serving widely separated client populations in our western states;
(2) special customs and distinct legal systems add to the challenge;
(3) distinctive and unique tribal court practices;
(4) use of native languages appropriate to the different Native American communities;
(5) commitment of years of one's life to become proficient in this distinctive legal practice.

Considerations such as these, heard by our board for several years in presentations by Native American programs, has convinced me of the continued vitality of this element of our delivery system.

Of course, Basic Field Programs also received attention in the budget mark proposed by the minority. The proposed allocation of $275,591,000 for Basic Field in fact was changed by the majority of the board as I noted at the outset of my presentation, by a vote of 7 - 4. As changed by the majority, the allocation set Basic Field Funding at $281,024,240. Of course, I do not choose to increase funding for Basic Field programs at the expense of other delivery systems and programs. As the Congress has recognized by its specific funding allocation, all the programs are important and deserving of funding. I share Congress' concern.

In proposing a budget mark, I intended to indicate continued willingness to be responsive to congressional concerns about the welfare of the Legal Services Corporation. I am constantly mindful -- and fearful -- of the poor state of relations between the corporation and the Congress. I am not alone on the board in feeling concern and alarm at the antagonism that characterizes the relationship, even as I feel deep regret at the several causes of the antagonism, and severe disappointment and helplessness at resolving the strained relations.

On one of my few occasions to make a speech about my service on the LSC board, I tried to describe several pillars of support that provide encouragement to me in my service as a board member. I noted that, despite the board majority's formal actions that have caused concern and alarm, and despite speeches of members of the majority that have caused outrage, there are enduring strongholds of support for legal services. Congress itself is ever vigilant in its oversight of the Legal Services Corporation board to insure that congressional intent is carried out and to prevent lasting harm to the system of legal services delivery to indigents. The organized bar continues to be supportive of the efforts of those who are dedicated to the provision of quality legal services to the indigent. Despite all that has occurred in our tenure on the board, field programs continue to attract persons who wish to enrich their lives by working to meet the needs of the indigent in our legal system. They provide the third pillar of support for the continued success of legal services. Finally I noted that my colleague Tom Smegal is also a pillar of support, not only because he is an individual whose professional career has been characterized by an ever-present commitment to meeting the needs of the indigent, but also because he is an exemplar of the commitment of so many across our nation. As a leader of the bar in his community and in our nation, he has maintained the cause of the poor as a cause worthy of the attention of lawyers generally. Fortunately, there are so many in the profession who share his concern, his dedication, his commitment, and they transcend all distinctions of political viewpoint or of geography in their resounding support for the continuation of effective delivery of legal services to the poor. I am thankful for those pillars of support for they have all provided encouragement to me during my service on the board of directors.

MINORITY VIEW OF LSC BUDGET

Senator RUDMAN. Mr. Smegal.

Mr. SMEGAL. Thank you, Mr. Chairman.

My name is Thomas Smegal. I am an attorney in private practice in San Francisco with the firm of Townsend and Townsend.

If you recall, I appeared last year as a member of the Legal Services Corporation Board of Directors, at your invitation, to express my concerns about the then budget that was under consideration.

I am particularly pleased to be joined this year by Mr. Eaglin and Professor Uddo who, along with our two client members, constitute an ever increasing minority view on our Board.

When I refer in my remarks today to the Board majority, I am referring to the six who continue to vote with locked arms over the issues of funding of the Legal Services Corporation.

As I mentioned, I am here to express my concerns. I would be here were the budget $305 million, and I am here when the budget is $250 million, and I would be here if the budget were $330 million.

If I could focus for just a moment on what happened in Santa Fe as Professor Uddo already has, the six-person majority of the Board voted, and I have the transcript here, as Professor Uddo has pointed out, with no logic or reasoned process.

The only statement that was made on Mr. Wallace's supporting motion was that the President had proposed $250 million, therefore, we should accept that compromise, that new idea that has now been put on the table. That new idea, by the way, was not a new idea. It certainly has not been a new idea in the 3½ years that I have been on this Board.

One of the other Board majority, Ms. Bernstein, on every occasion where we have considered the budget since fiscal year 1986 has proposed some funding less than $305 million. As recently as December of last year, 3 months ago, when our initial budget was under consideration, she proposed $284 million, and the only vote she got was her own.

The Board majority at that point, when the President was proposing zero funding, voted to freeze funding again at $305 million as they had for the last 4 years.

In the face of an opportunity, at the proposal of Ms. Bernstein to lower that funding to $284 million or whatever, none of them voted with her. They are now arguing for a funding level that is $250 million, which they express as a new idea.

The new idea would be to fund not 100 percent of the Legal Services Corporation, but only one out of our programs, 18 to 22 percent of our programs would be funded by this proposal that received the most miniscule consideration in Santa Fe. As a matter of fact, the statements that were made, as Professor Uddo points out, gave no reasons. Mr. Durant's statement in support of $250 million gives no reasons.

SUBMISSION OF MODIFIED BUDGET

The process that was followed, the process that we are here with today is not much different from what we went through last year, if you recall, Senator. We are here with a modified budget. The Corporation submitted a budget earlier this year. We are coming now with a modified budget. We did the same thing last year.

If you recall, in May of 1987, we came in with a budget that looked a lot like the one that Congress had approved the year before, $305 million, line items for the various support services work, and so on.

Then what happened is your subcommittee met and proposed to the full Appropriations Committee that funding be raised to, I believe, $315 million, after a hearing similar to this. There was some activity. The full Appropriations Committee voted on that particular number, and lo and behold we have another Board meeting.

We had it on October 2, and the irony of that October 2 Board meeting, where Mr. Durant presented to us with a new budget request, I guess, as they say, sue sponte, without prior notification to the public or to certain Board Members such as myself.

Prior to that, Senator Gramm sent you all a letter the day before announcing that he was going to take the opportunity to include, as an amendment to the Continuing Resolution, a proposal to fund the Legal Services Corporation in a manner entirely different, a proposal that, he indicated, Mr. Durant supports.

Ironically, enough, on October 2, Mr. Durant advised me that he had a new idea, it was not a new idea. He is just bringing it to our table after obtaining it from Senator Gramm several days earlier, obviously.

In any event, with the wisdom of this subcommittee, the leadership of yourself and Senator Hollings, that Continuing Resolution amendment was soundly defeated 70 to 28. Undaunted, the Board majority, a week later, at our next Board meeting in Charleston, SC, in December proceeded to adopt the budget that was sent over initially, one in which the Gramm model of funding would have been the order of the day.

So here we are. Every year we seem to do this. We come in with a budget. Something happens which appears to the majority to make it necessary to come in with a new deck of cards, we reshuffle the deck, we shuffle them all up, and here we go with something that is entirely different.

We are back with another absurd budget in circumstances when we should be supporting the kind of budget that Mr. Eaglin has come forward with and suggested to you should be what the Senate and the House of Representatives should be providing to us.

The point that he made there is the one that Professor Uddo makes. We are an independent corporation, we should be bringing forward an appropriation request that is commensurate with a thoughtful assessment of our fiscal requirements of the LSC programs. The subcommittee is free to accept or reject the request depending on the realism of our approach, the efficiency of our advocacy efforts, and the competing constraints of the budget allocations.

In short, it is among our duties to testify for what we need to run our programs in a cost effective manner. You and your colleagues are the final arbitors as to what that allocation should be.

It is not our purpose or our function as a Board of 11 to balance the Federal budget. For us to come in here every year with a freeze budget, as we started out doing earlier in the year by a six to five vote, that is not even appropriate.

Mr. Eaglin's comments are the kind that are being made at the Board meetings, that are being made by the audience to whom we address our public comments. Mr. Curtin will be here and give you the benefit of the views of the American Bar Association, I am sure.

In spite of what this subcommittee has done, in spite of what Congress has done, in spite of what the Senate has done, we have examples over and over again of the inability of the Board majority to heed or to recognize the need to listen to our constituents.

We had Mr. Wallace's paper directed primarily at Part 1607, that was published without a Board discussion. Mr. Wallace explained that he had discussions with several Board members, but we didn't have a public discussion on the proposal. It is presented to the public in the Federal Register, and we get 567 responses, all negative except for one, who may be a relative of Mr. Wallace, I am not sure.

[General laughter.]

Mr. SMEGAL. Anyway there was one positive response followed by 567 negative responses. I tried to trace the postmark, but I couldn't get it.

In any event, one of the other things that Mr. Wallace's paper would propose that we do, that we be given greater independence, that we be given the opportunity to make the kinds of decisions that the Board majority has been making by votes of six to five. That somehow or other this subcommittee back off and leave us to run our own affairs.

I would suggest that this would be the worst thing that you could possibly do. The Board majority is not capable of running this program in a sound, rational, organized way. We do not listen. We glaze over every rational statement that is made, and it doesn't make any difference who it comes from.

We have had presidents and former presidents of the American Bar Association appear before us. We have had distinguished lawyers from throughout the country. We have had clients come before us. Irrespective of who is there, it doesn't make any difference, the Board majority has a view, and that view is that this program should not exist.

Mr. Durant suggests that under the President's budget, 96 percent of the funding would go to the programs. Well for 7 years, the President has suggested that 100 percent of the funding go to the programs, unfortunately, the funding was zero.

Now you have 96 percent of the funding going to the programs, about a $50 million cut from what these programs had last year, $231 million versus $281 million that we got under the wisdom of this Senate and the House of Representatives.

It has been an interesting 3½ years for me, Senator Rudman. I have enjoyed it. I feel honored by the opportunity to serve the country in this capacity, and I have been honored by the nomination by the President, and I have been honored by the confirmation by the Senate. But I would suggest to you, if you give us free rein, it is going to be fascinating.

Senator RUDMAN. Thank you, Mr. Smegal, for your very frank, understated comments.

I would say that there was one word you used that I found interesting, and that was "undaunted." There are a lot of awards, and I am going to have my staff see if they can find an award for the undaunted, I would like to give it to the majority of the Board, because they certainly are undaunted. I will have something to say about that.

[The prepared statement of Mr. Smegal follows:]

TESTIMONY OF THOMAS F. SMEGAL, JR.

MEMBER, LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE.

My name is Thomas F. Smegal, Jr. I am an attorney in private practice at the firm of Townsend and Townsend in San Francisco, California. I appear today as a member of the Legal Services Corporation Board of Directors and its Committees on Audit and Appropriations and Operations and Regulations. I am here at the Subcommittee's request to give my reaction to the Corporation's budget request for FY 1989.

I am particularly pleased to be joined this year by my fellow board member, Paul Eaglin, from North Carolina. Paul wishes to address the need for increased funds for the grantees of the Legal Services Corporation, as incorporated in his budget proposal for FY 1989. Unfortunately, that proposal, narrowly defeated by a vote of 5-6, is not before the Subcommittee. I will limit myself to responding to the official request which was adopted by an equally slim margin of 6-5. I will also address two excessive regulatory initiatives this Board has attempted to impose on its grantees. Thankfully, this Subcommittee has prevented such action.

Before I proceed, I would like to point out that the votes I have just mentioned have not always been so close. Indeed, only within the last year and a half have Paul and I been joined by three of our colleagues. In 1985 and 1986, many decisions of the Board were passed by votes 9-2. At times it was discouraging, but never hopeless. Paul has been a strong, sensitive ally with whom I am proud to serve on the Legal Services Corporation Board. I know he joins me in thanking the fellow members who comprise our significant minority.

FY '89 BUDGET REQUEST

As I mentioned, I am here to respond to the Corporation's official budget request for FY '89. I am not sure I can do so in strong enough words. I know the ranking member of this Subcommittee, Mr. Rudman, appreciates this dilemma. In the past he has found himself extraordinarily frustrated with the Corporation. This morning, as so frequently in the past, I understand and join in his attitude.

In short, I am both appalled and embarrassed by this budget request. In a word, it is disgraceful. Let me explain my primary concerns.

1. The amount of money we request this year, $250 million, is pathetically insignificant to meet the ever-increasing needs of the poor in this country.

2. The justification for this figure, to bring our budget request in line with that of the Administration, is even more offensive.

3. The new format of the budget which entails elimination of many of the proven delivery components in favor of "direct delivery of services" is both irresponsible and unsubstantiated.

4. The process by which we arrived at this request is seriously flawed. Let me expand on my criticisms by starting with this last point.

The Process

The budget represents the second budget request approved by the board for FY 1989. On December 18, in Charleston, South Carolina this board, by a vote of 6-5, adopted an FY '89 budget of $305.5 million. I, and my four colleagues, supported a much higher budget request. Nevertheless, at least $305.5 million, as inadequate as it is, has some justification in that it is the same as the FY 1988 Appropriation.

On February 18, 1988 the President submitted his budget request to Congress. For the first time in eight years, the

Administration's request included money for the Legal Services Corporation. Not enough money by a long shot, but ironically, in this last year of this Administration, it was a start.

The President's budget request came two months after our Board approved its FY '89 request. Nevertheless, on March 1, 1988, John Bayly, President of the Corporation, was instructed by Board Chairman W. Clark Durant, III to write a letter to Congressman Neal Smith, Chairman of this Subcommittee's counterpart on the House side, requesting a postponement of the Corporation's March 8 testimony before that Subcommittee. The reason for the request was as follows:

> "Because the LSC Board has not addressed itself to whether the Administration's request affects its own submission, Chairman W. Clark Durant, III, has indicated that the Corporation's Budget Request will be included within the agenda of the Board's next meeting on March 25 in Santa Fe, New Mexico. I expect thereafter to be directed by the Board to notify you promptly of any Board action which may alter, amend, or otherwise affect the enclosed Budget Request."

As explained in the letter, and without notice to fellow Board Members, Mr. Durant summarily scheduled reconsideration of the Corporation's FY '89 budget request. The result of that arbitrary decision is the budget before you. It was adopted, once again by a slim majority of 6, just five days ago.

Unfortunately, I cannot guarantee that this is the last request the Subcommittee will receive from us this year. It is fairly early in the appropriations process, a process which this Board majority is renowned for disregarding. Let me remind the Members of what occurred last year.

On May 20th, the Corporation presented its official FY '88 request to this Subcommittee. On September 23, the full Committee considered and reported a bill, H.R. 2763, which contained the appropriation for the Legal Services Corporation. On October 2, nine days after the full Committee's action and two days after the end of the 1987 fiscal year, Board Chairman Durant introduced a substitute FY '88 budget for our Board's consideration. Once again, the Chairman neglected to provide advance notice to Board members of his intentions. Nevertheless, his faithful followers fell in lock-step, adopting the revised FY '88 budget by a vote of 6-5. The motion was orchestrated to the point that the voting was kept open after several Board members had left, so that Board Member Michael Wallace could cast the deciding vote telephonically.

Not only had Mr. Durant failed to apprise Board members of his substitute budget, but he had enlisted the sponsorship of one of your colleagues, Mr. Gramm, in the hopes of by-passing this Subcommittee. In his Dear Colleague letter of October 1 (a day before Mr. Durant made his motion), Mr. Gramm wrote of his intention to offer the Durant substitute budget as an amendment to the Continuing Resolution. The rest of the story is familiar.

You and your fellow committee members recognized the ploy of Mr. Durant, his Board constituency and the sponsor of the amendment. On October 30, 1987, your Committee wrote to their colleagues:

> "To the best of our knowledge there is no organization supporting the Gramm Amendment that also supports the existence of the Legal Services program. The proposal was put forward by the Chairman of the Corporation's Board, who less than a year ago advocated the elimination of the Legal Services Corporation, notwithstanding his fiduciary duty to carry out the purposes of the LSC Act. The Gramm Amendment simply represents another attack by individuals and organizations who have historically opposed a federally-funded legal services program, this time under the guise of increasing the effective delivery of legal assistance to the poor."

On December 11, 1987, Senator Hollings and Senator Rudman led the charge against the Gramm amendment, tabling it by a vote of 70-28.

To the legal services lawyers and their staff in the field, to the thousands of the clients they serve, to those of us in the minority on the Board and perhaps to some of you sitting here, the vote represented a resounding affirmation of the national legal services program we have been struggling so hard to maintain over the past few years. To the majority of the LSC Board who supported the amendments' adoption, the overwhelming margin of victory went unheeded. In a phrase, it fell on deaf ears.

On December 18, 1987, just one week after the Gramm defeat, by what has now become an automatic 6-5 vote, this Board adopted a budget which is virtually identical to FY 1986-87-88 budgets. Three months later, just five days ago, we added insult to injury by adopting the most egregious version to date. As I said before, this budget is a disgrace.

The Budget Format

The budget format is no more defensible today than it was on October 2, 1987 or December 11, 1987. In fact, it raises more questions than it answers. Among the most obvious are:

1. Why would the Legal Services Corporation send the Congress a budget proposal whose format is identical to that which the Senate overwhelmingly rejected last year?

2. What is the justification for the revision of the format?

3. What is "direct delivery of services"?

4. Why would the Board eliminate components of the delivery system which have proven to be efficient and cost-effective?

5. The Congress understands that this budget is opposed by field programs, clients and bar associations around the country. In revising its budget, to whom does the Legal Services Corporation Board listen? Only its bare 6-member majority?

In the Dear Colleague letter of October 30 concerning the Gramm amendment, the members captured the baselessness of this budget.

> "For over three years, the Appropriations Committee has asked the Legal Services Corporation to provide some evidence that would justify the changes this amendment would impose. The Corporation has failed to do so. In the absence of such evidence, we believe that poor people will be best served by continuing the programs this amendment would destroy."

As Committee members and Board members whose duty it is to examine and submit a budget, Paul Eaglin and I have heard strong arguments in favor of retaining the individuality (and funding) of national and state support, the migrant programs, the

Clearinghouse, training centers and legal research. This Subcommittee has heard the same compelling arguments. Fortunately, your members have listened, have heard, and have acted. Indeed, on the floor of the Senate on December 11, 1987, Mr. Hollings said:

> "... we specifically earmarked funding for those services to ensure they were funded. We established them as priorities and we expect them to be funded."

The majority of the Board of the Legal Services Corporation has either listened and ignored or not listened at all. Fortunately, the requests of this same majority have been repeatedly overturned or ignored.

I ask the Subcommittee to do that again in retaining the individual line items for those delivery components the Board purports to subsume under the category of "Direct Delivery of Services."

The Justification

In my appearance before this Subcommittee last year, I argued that it was the responsibility of this Board to accurately and strenuously present the need of our programs in the field. By need I mean the amount of money required to represent the indigent in this country.

As an independent Corporation, we should submit an appropriations request that is commensurate with a thoughtful assessment of the fiscal requirements of the program. The Subcommittee is free to accept or reject that request depending on the realism of our approach, the efficacy of our advocacy efforts and/or the competing constraints on the budget allocation of the Subcommittee as a whole. In short, we should present and testify for what we think is needed to run our program in a cost-effective manner. You and your colleagues are the final arbiters of the allocation. That is the way I view the relationship between an independent entity and the Congress. That is not the basis for the FY '89 budget request of the Legal Services Corporation.

The deliberations of our Board never focus on the need of our programs. I challenge anyone to find one comment in this budget request which advocates on behalf of our grantees or on behalf of poor clients. For the last three years, in submitting a freeze level of funding at $305.5 million, we have based our request on the need to reduce the federal budget deficit. I acknowledge that deficit reduction is an important battle. No three people know that better than Mr. Hollings, Mr. Rudman and, somewhat ironically, Mr. Gramm. But it should not be the sole basis for the request of our Corporation. It is neither responsible fiduciary behavior on our behalf nor, more importantly, responsive to or supportive of the very programs and clients we are charged with representing.

And to make matters worse, this year's budget is based on even less supportable evidence. The justification for this year's request is the amount included for the Legal Services Corporation in the President's budget submission of February 18, 1988.

As I mentioned before, this is the first year in eight that President Reagan has included money for the Corporation in his budget. It is a grossly insufficient amount -- but that is not relevant to this point. My point is that this Board's meager request for FY '89 is based solely on the Administration's request. There is no justification or analysis for $250 million as opposed to any other amount larger or smaller. It appeared out of thin air. It is curious and inappropriate behavior for an independent entity.

The Amount

In FY 1981 the Legal Services Corporation reached a funding level of $321 million, a level it has not seen in the ensuing seven years. In FY 1982, with the advent of the Reagan Administration, the Corporation's Appropriation was slashed 25% to $241 million. That is the lowest the figure has been in the last six years. Yet this budget includes precisely that amount of money for delivery of service in FY 1989 ($241 million for direct delivery and $9 million for management and administration). The total of $250 million represents a $55 million or 18.2% reduction from this year's appropriation of $305.5 million. And $305.5 million is a freeze for the third year in a row.

Thanks to your hospitality, Mr. Eaglin will present a realistic budget for FY '89. The one adopted by this Board, is a farce. It represents unconscionable behavior by a bare majority of this Board.

GOVERNING BODY REGULATION (45 CFR 1607)

In addition to its efforts to reduce funding for legal services, the Board majority is going forward with a set of far-reaching regulatory proposals, affecting virtually all legal services programs that, if implemented, would alter in fundamental ways the selection, composition, and operation of programs' governing bodies.

On October 19, 1987, the Corporation published for comment in the Federal Register a proposal to completely revamp the existing regulations on legal services programs' governing bodies. The proposal was authored by LSC Board member Michael Wallace, the Chair of the Operations and Regulations Committee. Mr. Wallace wrote the proposal and submitted it to the Federal Register on his own, without formally presenting it to the Operations and Regulations Committee or the full Board, completely bypassing the process that has been utilized for virtually all previous regulatory changes proposed by the Corporation. While Mr. Wallace may have informally consulted with other Board members about his proposal, he made no attempt to consult with me, a member of the committee, nor did he warn me that a proposal was in the offing. The proposed changes are neither cosmetic, technical, nor are they insubstantial; rather they go to the heart of the question of who governs legal services programs and sets their agendas, and should have been fully considered by the Committee and Board before publication.

Following publication, the proposals were discussed at two meetings of the Operations and Regulations Committee, on November

20 and December 17-18, 1987. Public testimony at both of these meetings was unanimously opposed to the adoption of Mr. Wallace's proposed changes. Perhaps more significant than the testimony was the avalanche of written comments received by the Corporation in opposition to the proposals. The LSC staff reported that by December 17, 1987,[1] it had received almost 500 comments. During the next month it received 100 additional comments. In all, by the end of January 1988, the Corporation had received 567 comments and virtually all were opposed to Mr. Wallace's proposal to revise Part 1607. The comments came from every segment of the legal community with an interest in legal services -- state and local bar associations, Members of Congress, legal services programs as well as countless other individuals, groups and organizations. The American Bar Association, speaking through the Standing Committee on Legal Aid and Indigent Defendants, was vehement in its opposition to the proposals. Mr. Wallace was not deterred.

Spurred on by the ABA's opposition to the Wallace proposal and in anticipation of its adoption by a majority of the LSC Board, your committee crafted, and Congress adopted, a rider to the LSC appropriation (CR) that effectively prevented the Corporation from implementing the proposed revisions, at least while the rider remains in effect.[2] While admitting that the rider prevented the Corporation Board from implementing most of the proposals immediately, Mr. Wallace, nevertheless, pressed on.

At the January 28, 1988 meeting of the Operations and Regulations Committee, Mr. Wallace presented a revised version of his governing body proposals. While dropping several of the more burdensome original proposals, the revised version continued intact many of the most objectionable sections of the original but made substantial modifications in others. This time there was no publication in the Federal Register and no formal opportunity for public comments on the new proposal. Mr. Wallace claimed there was no time for a formal public comment period because the Board had to act quickly if it was to adopt the proposals in time to present them to this committee at this hearing, in the hope that Congress could be persuaded to lift the restrictions in the CR.

---

[1] Under the original Federal Register publication (52 F.R. 38900) comments were due by November 18, 1987; that period was subsequently extended until December 10, 1987 and again until December 17, 1987.

[2] The Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-202, 101 Stat. 1329 (Dec. 19, 1987) restricts the corporation from...

> ...impos[ing] requirements on governing bodies of recipients that are additional to, or more restrictive than the provisions of Public Law 99-180 [the McCollum amendment] and Section 1007(c) of the Legal Services Corporation Act...."

The Board determined, however, that the CR did not prevent it from adopting and implementing, after a reprogramming notice to the Appropriations committees, the proposed provision that would prohibit legal services attorneys or staff from serving on the governing bodies of state and national support centers or other local legal services programs. As the Chairman of this committee made clear in his February 25, 1988 letter to the Corporation's President denying approval for the change under the Appropriations Committee's reprogramming guidelines, the Board was wrong.

On February 26, 1988, the LSC Board held a special meeting to consider the remaining Wallace proposals. By a vote of 6 to 5 the Board adopted many, although not all, of the provisions. The principal changes adopted by the Board were the following:

- Political Party Affiliation -- No more than 60% of governing body members may belong to the same political party. This requirement will interject partisan political considerations into the process of the appointing of members to local legal services programs boards, focusing attention on a board member's party affiliation, rather than the individual's commitment to and knowledge of the delivery of legal services to the poor. In some areas of the country, where client board members are likely to be from only one political party, bar associations will be required to balance the membership by appointing attorneys primarily from the other major party.

. Appointment of Attorney Members of Support Center Boards-- Attorney members of national support center boards must be selected by "a combination of bar associations whose combined membership represent a majority of attorneys in the nation." This requirement will disrupt a selection system that now works well and has produced, for the most part, attorneys who are geographically dispersed and broadly representative of the legal community working on the issues and on behalf of the clients represented by the centers. Bar associations would be asked to make appointments to programs whose offices may be geographically distant from the bar's location and whose work may have little or no impact in the areas served by that bars' members. Bar associations will understandably be reluctant to make appointments under those circumstances.

. Limitations on Committees -- Board committees may not bind the program's governing body as a whole unless the quorum requirement for the committee is the same as that for the whole board and the committee make up reflects the same proportion of attorneys, clients and political party affiliation.

. Quorum and Proxies -- Quorums must be physically present for at least four board meetings each year and proxy voting is prohibited.

Both of these requirements ignore the provisions of governing state law and impose mechanistic restrictions that unnecessarily limit program flexibility. They may make it virtually impossible for some programs, especially those in rural areas or those covering large geographic areas, to operate and perform essential functions.

Mr. Wallace and his fellow Board members who voted to adopt these changes are asking you to lift the restrictions that now prevent the Corporation from implementing them and not to reimpose similar restrictions for the next fiscal year. As a member of the Board who voted against all of these changes, I ask you to ignore their request and to continue in force the existing limitations on irresponsible action by the LSC Board.

Lest there by any misconception on this point, the changes adopted by the Board, while less onerous than the original Wallace proposals, nevertheless, are not benign, they are not merely procedural, they will not make programs better or more responsible, they are not required by the McCollum amendment, they are not necessary and they cannot be justified! These revisions impose substantial additional burdens and restrictions on legal services programs and their boards -- precisely the kind of burdens that Congress intended to bar by the language of the Continuing Resolution. Do not allow the Corporation to convince you that these changes do not violate the spirit of the CR and that you should allow them to take effect.

Neither Mr. Wallace nor the Corporation staff has ever provided me with any facts that could possibly justify imposing the changes passed by the board majority. On December 29, 1987 -- more than two months after the original Wallace proposal was published in the Federal Register and ten days after Congress approved the restrictions in the CR -- the Corporation staff produced a report entitled "Monitoring Findings on the Attorney Composition of LSC's Recipients' Governing Body" prepared by the LSC's Office of Monitoring Audit and Compliance, the so-called "MAC Report." The MAC Report is replete with examples of how legal services program boards allegedly operate. By its tone the Report suggests that these examples prove that program boards are out-of-control, or ineffectual, and that bar associations are being manipulated by program staff.

In fact, the MAC Report is riddled with factual inaccuracies, misstatements and omissions, and misrepresents or mischaracterizes many of the facts that were found by the monitors. In addition, the Report suggests that many of the practices described are somehow improper or illegal, when, in fact, those practices are perfectly appropriate and often specifically praised by the monitors or approved by the Corporation. Furthermore, for those few practices that are problematic the Report does not indicate how many recipients are currently involved in the alleged activities and where any programs have changed their practices in response to monitors' comments.

Finally, even if everything the MAC Report says is true and current, it would not begin to justify the changes adopted by the LSC Board. For example, nowhere in the MAC Report is there any suggestion that boards are "unbalanced" by political party to justify the 60 percent requirement. Nowhere does the Report state that legal services attorneys or staff from one program play any inappropriate role or exert undue influence on the boards of other legal services programs on which they sit, nor that they represent any conflict of interest. The other changes are overbroad and attack problems that are perceived to exist in a few isolated programs in a manner that would disrupt operations of the majority of legal services program boards in which no problems are even suggested. Under the current Part 1607, the Corporation now has all of the tools to solve the few real problems that it has highlighted and, if it were so inclined, could do so in a constructive, cooperative way.

Instead, the bare Board majority of six has chosen to go after legal services programs with a sledgehammer, despite the overwhelming opposition of the organized bar, the Congress and the entire legal services community. I can only wonder what they really hope to accomplish.

"LOBBYING REGULATION" - PART 1612

Pub.L. 100-202 contains a restriction preventing the Corporation from implementing or enforcing provisions of Part 1612 to the extent the regulation imposes restrictions on the use of private funds by legal services programs which go beyond restrictions imposed on such funds by the Legal Services Corporation Act. [Part 1612 regulates legislative and administrative representation and training activities.] In my view, this provision must remain in effect to prevent the

Corporation from continuing to restrict the use by recipients of private funds. In fact, Congress may have to strengthen the provision to keep the Corporation in check.

In the first place, the additional restrictions imposed by the Corporation on the use of private funds are probably unconstitutional. Numerous communications to this Subcommittee by prominent law firms and law professors have concluded that such restrictions on these activities violate the First Amendment. See, e.g, Letter of September 14, 1987 to Senators Hollings and Rudman from Albert J. Rosenthal, Maurice T. Moore Professor of Law, Columbia University School of Law and the May 6, 1987 Memorandum from Arnold and Porter. I agree that LSC runs a substantial risk of violating the First Amendment to the Constitution by restricting programs' use of private funds for training and representation of eligible clients before legislative bodies and administrative bodies.

Even if there were no constitutional problems, the practical impact of these restrictions on program operations justifies continuation of the Congressional ban. Programs have grants from foundations, United Way and other private sources to undertake representation before administrative agencies on rulemaking, to directly represent eligible clients before legislative bodies, and to train clients, social services agency personnel and others. Part 1612 imposes severe restrictions on these legitimate activities.

Let me illustrate the problems by examining section 1612.9(a) on training. Under this section, recipients are restricted from using private funds to train nonlawyers or nonparalegals if, in the course of that training, information about existing statutes or regulations is disseminated. According to the comments we received in August of 1987, many recipients receive funds from private funding sources to undertake such training activities.

For example, one program has a private grant to train hospital staff and the parents of chronically ill and disabled children about the laws affecting such children and their eligibility for social services. Another program has private funds to provide training to the existing network of volunteers and staff of 2,000 domiciliary homes throughout North Carolina which provide custodial care for the 19000 mentally impaired residents of the state. These mentally handicapped persons were discharged from state facilities and placed in small rest homes or family care homes in which the paid and volunteer staff often lack knowledge about the legal rights and human needs of the residents. Another program receives a private grant to train police, social services and shelter workers from crisis intervention agencies on legal issues regarding domestic violence.

Under the 1987 regulation, all of these programs would have to return these grants. However, under the LSC Act, programs could retain these funds and use them for the purpose they were provided. Section 1007(b)(6) of the LSC Act explicitly authorizes "the dissemination of information about ...[public] policies.." in the course of training nonattorneys or nonparalegals.

Although it is apparent to me that the Congress adopted the language in Pub. L. 100-202 to set forth unequivocally its views that the private funds of a recipient should not be restricted unless explicitly required by the LSC Act, the Board does not believe that it needs to reconsider Congressional views and has decided not to consider changes in Part 1612 needed to conform to Congressional intent.

This is typical of the board majority's actions. In 1983, this subcommittee reached a compromise with Senator Hatch and others on Part 1612. Since then a majority of this board, as well as its predecessor, decided that they could override the delicate compromise which had been worked out. In the Board majority's view, LSC has the authority to impose additional restrictions under a theory that they can enlarge upon the relevant legislation and engage in legislative rulemaking even when Congress has spelled out in detail what can and cannot be done.

In 1986, the Board attempted to impose the same lobbying restrictions on private funds that they imposed on LSC funds. They did this even though they acknowledged that the appropriation acts only applied to LSC funds. When faced with the 1986 Congressional reaction to the 1986 regulation in Pub. L. 99-591, the Board majority made a few changes in the provisions on private funds, but they did not address the principal problems that had been identified by members of Congress. In July of 1987, the Appropriations Committees instructed the Board to reconsider the issue. The Board did virtually nothing at that time to respond to the Committees' concerns. Now, when faced with explicit Congressional language, we again do nothing to respond to a Congressional mandate.

Even more disconcerting is the fact that the Board has taken no action to prevent the LSC staff from enforcing those restrictions on private funds that are not authorized by the LSC Act. Recipients have been given no guidance about what the Corporation believes these restrictions mean and how they will be interpreted by the Corporation. Recipients do not know what provisions of the regulation are or are not to be enforced and must act at their peril in expending private funds which they have received for activities restricted by Part 1612.

The Corporation justifies its action on private funds as necessary to prevent government subsidization of legislative activities. But LSC recipients are required to segregate funds used for legislative work. Part 1630 of the Corporation regulations, adopted in 1986, specifically prevents recipients from allocating to LSC funds the direct costs, or a disproportionate share of program overhead and other indirect costs which would be used to subsidize restricted activities. LSC has a cost accounting system in place the ensures its funds are not misspent.

In short, Congress must again intervene and explicitly set out the limits on Corporation action. Indeed, because the

Corporation fails to even acknowledge the existence of the rider, Congress will probably have to spell out even more clearly in the appropriation bill for this year that the Corporation cannot impose restrictions on private funds through its 1612 regulations.

CONCLUSION

The first three pages of our budget request for FY '89 are replete with references to restrictions that have been placed on legal services programs by the Congress. Nowhere in the narrative is there mention of the fact that the only new Congressional restrictions in the last two years are those that limit this Board's actions, not our programs. There is little doubt in my mind that you have confidence in the performance of our grantees. The confidence you lack is in this Board. For the last two years, you have found it necessary to earmark funding for specific services so we would not eliminate them. And you have prohibited us from implementing regulations that are more restrictive than the legislation you have passed. In turn, each year the 6-member majority has asked you to lift the restrictions and give us discretion over our budget.

We do not deserve that latitude. Nothing in this budget request justifies our request of you. You must continue to manage this Program because we have failed miserably in our stewardship. One need only to read the request to recognize that. We oversee 284 basic field offices whose staffs represent thousands of indigent clients around this country. Yet we have not one word of praise or encouragement for our programs. In fact, for the last three years we have requested no increase in funding for them, despite decreasing resources and increasing need at the local level. And most egregiously, we have suggested a drastic reduction in their funding for the next fiscal year.

In his comments during the December 11 debate on the Senate floor, Mr. Rudman said:

> "Quite frankly, I do not trust the Board of the Legal Services Corporation further than I can throw the

> Capitol. They have double-crossed the Senator from South Carolina and the Senator from New Hampshire at every possible opportunity. Frankly, I am sick of it."

The Senator from New Hampshire is right on mark. He gave this Board a chance and we blew it. If you slacken the reins in the last year of our oversight, the program will be ruined. It is a painful, but true admission. And, despite having made it, I am still honored to be associated with the Legal Services Corporation's grantees and to work closely with this vigilant Subcommittee.

Columbia University in the City of New York | *New York, N.Y. 10027*

SCHOOL OF LAW

435 West 116th Street

September 14, 1987

Senators Ernest F. Hollings, Chairman and
Senator Warren B. Rudman, Ranking Minority Member,
Subcommittee on Commerce, Justice, State, the
Judiciary and Related Agencies
United States Senate Committee on Appropriations
Washington, D.C. 20510-6025

Dear Senators Hollings and Rudman:

As a law professor, I have had a scholarly interest in the constitutional questions arising out of the practice of placing conditions upon government spending. Some of these questions are involved in regulations of the Legal Services Corporation prohibiting certain activities, funded entirely from private sources, of LSC grantees. Among these activities are some that would surely be protected by the First Amendment against direct regulation by any arm of government -- lobbying, direct and grassroots, and certain training programs, among others.

I would like to confine my observations to constitutional issues, although there may also be problems as to the consistency of these regulations, at least in part, with the underlying statutes.

Freedom of speech has often been stated by the Supreme Court to have a "preferred position" among constitutionally protected rights, "the indispensible condition of nearly every other form of freedom." And among types of speech, debate on issues of government lawmaking is at the very core. The Court has repeatedly held that such speech may be curtailed only upon a showing of a compelling overriding interest, and even then the narrowest possible means must be employed to avoid any unnecessary abridgement. See, e.g., Palko v. Connecticut, 302 U.S. 319, 327 (1937); United States v. Carolene Products Co., 304 U.S. 144, 152 n.4; First National Bank v. Bellotti, 435 U.S. 756 (1978).

On the other hand, the government is not required to finance the exercise of every constitutionally protected right; this was held specifically with respect to lobbying, in Taxation with Representation v. Regan, 461 U.S. 540 (1983). Thus, there is no serious question as to the validity of the decision by Congress to forbid use of federal funds to finance lobbying by LSC grantees: the problem arises when the restriction is extended to bar an organization that receives LSC funds from using non-government funds to pay for its lobbying or other forms of communication generally protected by the First Amendment.

There is a great difference between prescribing the purposes for which government funds may or may not be employed, and using a grantee's acceptance of government funds as a foot in the door to forbid his exercise of constitutionally protected rights through other means. For example, the government may condition a scholarship on the student's continuing his or her studies; but may the government prescribe that the scholarship is forfeited if the student votes?

There has been at least a century of debate over whether it is constitutional for federal or state governments to impose conditions upon their spending that have the effect of interfering with the exercise of rights that could not have been validly infringed by direct regulation. Sweeping answers -- "always" or "never" -- have gradually been discarded. In the last few years, the Supreme Court has ruled on three cases which, taken together, strongly support the conclusion that the LSC regulations are unconstitutional.

In FCC v. League of Women Voters, 468 U.S. 364 (1984), public radio and television stations that received some government funding were forbidden from broadcasting editorials even though the government money was not used for that purpose; the Court held this to be an unconstitutional restraint on freedom of expression.

LSC apparently argues, however, that it needs to forbid the use of money from other sources for activities which may not be paid for out of government funds, in order to prevent juggling of accounts by such devices as deploying the government money for permitted purposes (e.g., overhead) and designating the private money for the forbidden types of communication. If this were the only way to prevent evasion of the restriction on use of government funds, a court would have to balance the governmental interest in not paying for lobbying against the interest in free speech. But it is not the only way. There is nothing to prevent the enforcement of strict accounting requirements, that government funds be segregated from other money. Indeed, LSC has issued just such regulations to prevent financial chicanery; they also provide that the recipient has the burden of proving that it employs proper accounting methods. These regulations are published at 45 CFR Part 1630. There is no reason to believe that they have not worked or are unworkable.

Any possible argument that prohibition is easier for LSC to enforce than is the auditing of a grantee's account is clearly insufficient: "As to ease of enforcement, the prospect of additional administrative inconvenience has not been thought to justify invasion of fundamental constitutional rights." Carey v. Population Services, Int'l, 431 U.S. 678, 691 (1977).

A closely analogous question arose in connection with an Arizona law that denied state funding to any family planning agency that engaged in abortion-related activities even with funds from other sources. It was clear that the state was not constitutionally required to pay for abortions; the issue was whether it could condition grants for purposes other than abortion on the recipients' not performing abortions. On a showing by the recipient that it could and did keep the state funds segregated from privately provided money, the U.S. Court of Appeals for the 9th Circuit affirmed a summary judgment that the statute was unconstitutional. Planned Parenthood v. Arizona, 789 F.2d 1348 (1986). And the Supreme Court unanimously affirmed without opinion. 107 S.Ct. 391 (1986). (This was an affirmance, not a mere denial of certiorari.)

The Supreme Court pointed out in Taxation with Representation, 461 U.S. at 544, that an organization that wanted to lobby and still remain eligible for tax-deductible contributions could have done so by spinning off its lobbying activities into a separate entity funded by non-deductible contributions. The Court confirmed this in League of Women Voters, 468 U.S. at 399-401, distinguishing the prior case on the ground that a broadcaster could not split itself up.

In Planned Parenthood, segregation of public from private funds was feasible and had been done; only private funds paid for abortions. The infringement could therefore not be justified on the basis of making sure that state funds did not pay for abortions. The condition was therefore an unreasonable restraint on a constitutionally protected right, and invalid.

Taking these three cases -- Taxation with Representation; League of Women Voters; and Planned Parenthood - together, some conclusions seem clear:

1. Where segregation of funds (within one organization or by splitting) is feasible but the recipient has not done so, prohibitions on the use of public funds may be extended to private funds as well (Taxation with Representation).

2. Where the recipient has segregated the funds, however, it is unconstitutional to apply the prohibition to privately-funded activities (Planned Parenthood).

3. If segregation of funds is not feasible, perhaps a balancing of values must be made, with great weight accorded to freedom of expression; but if the reason segregation is not feasible is a government regulation that could be changed, then carrying over the restriction to the use of non-government funds is not the least restrictive alternative available, and is invalid (League of Women Voters).

So far as I have been informed, LSC grantees have kept proper accounts and complied with its regulations. If any have not, LSC has ample authority to cut off their funds. Hence, Planned Parenthood applies and the restriction on use of private funds is unconstitutional.

Even if it were true that segregation of funds within a single organization was insufficient assurance against juggling of accounts, the obvious alternative would be to spin off the challenged activities into a separate organization with its own accounts. But LSC itself has thrown a roadblock in the way of such a solution to its professed problem; its "Audit and Accounting Guide," dated January 1, 1986, section 1-7, effectively prevents the use of separate organizations with separate accounts as a way of ensuring isolation of government funds from possible use for forbidden purposes. As in League of Women Voters, there is a less restrictive alternative, and the restraint on communication paid for out of non-government money appears to be unconstitutional.

I hope that these comments may be of help to you and to the Subcommittee.

Very truly yours,

AJR

Albert J. Rosenthal
Maurice T. Moore Professor
of Law

ARNOLD & PORTER
1200 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D. C. 20036
(202) 872-6700
CABLE: "ARFOPO"
TELECOPIER: (202) 872-6720
TELEX: 89-2733

May 6, 1987

MEMORANDUM

FROM: Arnold & Porter

RE: Constitutionality of Proposed Legal Services Corporation Regulations on Lobbying Activities

This memorandum will examine the constitutionality of a regulation proposed by the Legal Services Corporation ("LSC") that would prohibit the use of private funds for lobbying activities. In summary, LSC's attempt to regulate such activities through its grants and contracts is an unconstitutional restriction on the right to free speech under the First Amendment.

Issue

Whether a federally-funded grantor's attempt to restrict the non-federally funded lobbying activities of a section 501(c)(3) organization is a violation of the First Amendment of the Constitution.

Legal Analysis

It is well-settled in the law that lobbying is a constitutionally protected activity under the First Amendment, *see* *Regan* v. *Taxation with Representation*, 461 U.S. 540 (1983), and that the Congress cannot enact legislation which either directly or indirectly dissuades this constitutionally protected speech. A statute which indirectly attempts to restrict any form of protected speech, such as lobbying, by withdrawing a government benefit from those engaging in the speech will, thus, not withstand constitutional scrutiny. See Planned Parenthood of Central and Northern Arizona v. Arizona, 789 F.2d 1348 (9th Cir. 1986), aff'd, 55 U.S.L.W. 3308 (U.S. Nov. 4, 1986).

The regulation at issue here would restrict the constitutionally protected lobbying activities of not-for-profit organizations that receive funds from the LSC even though these activities are non-federally funded. The relevant case law in this area makes clear that the limitations that the LSC seeks to place on the right to lobby are constitutionally infirm.

In Planned Parenthood, supra, for example, the Supreme Court affirmed in a summary motion the Ninth Circuit's holding that a statute that prohibits the grant of state funds to a non-governmental organization that provides abortion-related services violates the organization's First Amendment right to free speech. The Court distinguished between the provision in the statute that banned the use of state funds for abortion-related services, and the prohibition on the use of state funds by organizations that offer abortion-related services, even if the state funds themselves are not used for the services. The former exercise of state power is valid, whereas the latter provision was struck down as a penalty which would chill the exercise of the constitutional right to provide abortions. 789 F.2d at 1350-51. Similarly, in the instant case, the LSC regulation would unconstitutionally deny organizations that receive any federal funds the right to engage in lobbying activities, even though the federal funds themselves are not used in connection with the lobbying.

In F.C.C. v. League of Women Voters of California, 468 U.S. 363 (1984), the Supreme Court once again invalidated a statute which sought to regulate speech through grant or contract. The Court found an unconstitutional infringement on free speech in a provision of law which prevented a non-commercial recipient of funds from the Corporation of Public Broadcasting ("CPB") from editorializing.

There is some authority, however, that appears to support certain limitations on lobbying activities as a condition of receiving a federal benefit. In Regan v. Taxation with Representation, 461 U.S. 540 (1983), the Court held that Congress could, in the exercise of its spending power, reasonably refuse to subsidize the lobbying activities of tax-exempt, charitable organizations by prohibiting these groups from using tax-deductible contributions to support their lobbying efforts. The Court reasoned that this statute did not impinge upon the organization's right to lobby, but merely recognized that the Congress is not required by the First Amendment to subsidize lobbying. Id. at 545.

The Court in League of Women Voters, supra, however, was careful to distinguish the rationale behind its ruling in Regan from the reasoning employed in that decision. The Court pointed out that the educational broadcasting station received only one percent of its overall income from CPB, and yet was barred from all editorializing. Furthermore, in contrast with Regan, this activity could not be segregated according to the source of the station's funding and there was no way of limiting the use of federal funds to all non-editorial activities. Most importantly, the Court cited as the primary basis for finding a substantial abridgment of First Amendment rights the fact that the station was barred from using even "wholly private funds" to finance its editorial activity. 468 U.S. at 399-400.

The restrictions imposed by the LSC regulation would have the same effect as the statute in League of Women Voters and thus, can be distinguished from the restrictions upheld in Regan. The LSC regulation explicitly prohibits the use of "wholly private funds" with respect to activities that are afforded First Amendment protection.

Conclusion

The Supreme Court has consistently invalidated governmental attempts to deny benefits on a basis that serves to violate constitutionally protected interests. More specifically, it has invalidated on First Amendment grounds a federal-funded grantor's attempt to bar a private organization from using private money to fund its constitutionally protected activities. Hence, the proposed LSC regulation, which is aimed at prohibiting legislative activities, will not survive First Amendment scrutiny.

SUPPORT OF PRESIDENT'S PROGRAM

Senator RUDMAN. Mr. Durant, why don't you go ahead. We have your entire statement in the record. We have heard from everyone here now. We have to hear from you, and then I have a few questions.

Mr. DURANT. Thank you very much, Senator Rudman. It is nice to see you again.

Let me make a couple of brief summary statements regarding what I think are some of the essential points in what the Board is attempting to do, and also supporting the President's recommendation.

I think in context one must appreciate that for 10 years there hasn't been an authorization for this program. The program has been zero funded on the House floor twice. In 7 years, the President has recommended zero funding. Even, if I am correct, you, Senator Rudman, at one time did vote for zero funding of the program, and I think that it was in June of 1985 or 1986.

But I think what is important about what has happened here is that it is the first time that the President has supported funding for the Legal Services Corporation. The President's call for competing grants to legal services providers can be expected to reduce the cost of serving eligible clients, increase the number of people who can be served, and increase the number of kinds of providers.

The President's request for reducing the Federal share of funding legal services from $305 million to $250 million, and the Board's support of that position, will encourage funding from other sources. Even testimony at our Santa Fe meeting indicated that such had already occurred.

In fact, the report from the State Bar of California, the 1986-87 report, makes the very strong statement that in 1981 the Board of Governors of the State Bar of California approved the development of IOLTA and additional funds precisely because they realized that there was going to be a reduced Federal share of a very important effort, and that is to serve the legal needs of the poor.

DIRECT DELIVERY OF LEGAL SERVICES TO POOR

The President's budget concentrates, and our budget concentrates scarce Federal resources on the direct delivery of legal services programs for the poor. The programs would be free to contract with National and State Support Centers, if experts are necessary for any particular kind of service that may be required.

I think that the important thing of those kinds of decisions from the local programs is, frankly, that whoever the local providers are, they are in the closest position to be able to determine more clearly with their dollars the kinds of services that most directly and most effectively serve the needs of their individual clients.

The President's proposal and our proposal would also strengthen the restraints on lobbying by Legal Services Corporation grantees, and it would reduce the likelihood of programs becoming embroiled in issues which, frankly, detract from the important mission of the Corporation, which ought to be serving the direct needs of individual clients.

Also our proposal leaves free the opportunity to continue to explore a wide array of service providers. I think this Congress has recognized, when it passed the Older Americans Act in 1978, that the provision of services, in that case to the elderly, could also be effectively provided not just by legal services providers who are part of a delivery system, but a broader array of people, as some of the studies have shown under the Older Americans Act, at a reduced cost.

In one situation, in Texas, a three-county area is being served at approximately one-third the cost of what had been a Legal Services proposal to serve the same body and fewer clients.

I think the important thing about all this debate—and I appreciate all the wonderful sound advice my fellow Board member, Mr. Smegal, was able to get in his testimony—is essentially that the President's proposal and our proposal allows a very special kind of dynamic that can expand the base of people who are providing services.

I think the Congress should applaud itself, frankly, because when it was willing to make adjustments in Legal Services' budgets before, an outpouring from a variety of other sources, in substantial numbers resulted. In fact, I have the numbers.

FUNDING FOR LEGAL SERVICES

Just to get a sense of the exponential growth of this, in 1986, in attorney fee awards a total of $1.8 million came to Legal Services programs, and in State and local funding there was $23.7 million additional funding, additional Federal funding of $25 million, additional private and miscellaneous sources of $40 million. IOLTA, at that time, even though it had been the seed corn planted by the Legal Services Corporation, was only $5.9 million. There was a total in 1986 of $96 million additional dollars.

In 1987, the State and local funding was approximately the same, at $23 million. The private, miscellaneous, and additional funding was up to $50 million. The IOLTA money had gone, just in 1987 alone, to $45.6 million.

I think that everyone is in agreement—we talk about these divisions and all the rest, but frankly, Senator Rudman, everyone is in agreement on how, No. 1, you maximize resources; No. 2, you broaden the base; and No. 3, you reach out to as many possible eligible clients as possible. I think that in part it is a matter of not being satisfied with the status quo, and not simply saying that this is a money problem. It is a structural problem.

The Senator sent me a letter a year ago, after my speech to the ABA, and I would like the Senator to know that one year, approximately, after that speech, the Protection Committee of the State Bar of California has just completed extensive hearings on the problem of access to justice for not only poor people, but for low- and middle-income people.

One of the things that has come out of those hearings is that there have been barriers established for good reasons, and sometimes not so good reasons, which have kept more people from being involved in providing the kinds of services that poor people and lower and middle-income people have to meet their daily needs and daily problems.

I think that the Congress of the United States should be willing not to lock solely onto the status quo and be willing to make certain changes, and I think the President's budget gives that impetus.

You may say that the President hasn't been a part of the debate because he has recommended zero funding for 7 years, but I think that he has, and that he represents a strong sense of what the American people do want, having won substantial elections in 1980 and 1984. I think that we should use this as an opportunity to really reach out to serve the poor.

Let me make one other comment. Clients, like all individuals, have differing viewpoints. I have travelled to meet with different clients in Atlanta, in New Orleans, in Santa Fe, in Detroit, and in Chicago, and one of the things that I sense here, from the many clients who I have talked to, is a great frustration that their needs are not being met.

That was one of the reasons that, at our Board meeting in Santa Fe, and thanks to the support of Mr. Smegal, Mr. Wallace and others, we were able to pass a resolution that Mr. Bayly is to find a certain sum of money out of the budget to evaluate ideas by clients that could support a direct delivery of services to clients. This would cover training that they have talked about in a variety of meetings that have taken place not only at the Board level, but at the committee level, and in individual meetings.

Essentially, Senator, I think there does exist an opportunity to make changes. I appreciate Professor Uddo's and Mr. Smegal's, and Mr. Eaglin's comments. I have appreciated their service on the Board. It has certainly made it lively and energetic, and that is good. But I think we need to get past thinking about simply higher Federal budgets of any particular program.

Mr. Smegal was quite correct: these decisions are not made on the basis that we must balance the Federal budget. I don't think that is our responsibility; it is yours.

The question is, how can we cut through the status quo and be on the cutting edge of trying to expand and change the status quo, which everyone agrees is not working and not meeting the needs of poor people.

Thank you, Senator, for your patience, and this opportunity to meet with you.

[The prepared statement of Mr. Durant follows:]

STATEMENT OF WILLIAM CLARK DURANT III
CHAIRMAN
BOARD OF DIRECTORS
LEGAL SERVICES CORPORATION

Good afternoon, Senator Hollings, and members of the Subcommittee. I am Clark Durant. I am a partner with the law firm of Durant and Durant in Detroit, Michigan. I serve as the Chairman of the Board of Directors of the Legal Services Corporation (LSC). Accompanying me this afternoon is Michael B. Wallace, who is the Chairman of the Committee on Operations and Regulations of the LSC Board of Directors. Mr. Wallace's statement will focus on the Corporation's activity in the area of regulation during the 1987 fiscal year. Finally, also with us this afternoon is John H. Bayly, Jr., who is President of the Legal Services Corporation. Mr. Bayly, who also is an ex officio member of the LSC Board, will have a brief statement to make this afternoon.

Mr. Chairman, as you know, the Legal Services Corporation is requesting an appropriation of $250 million from the Congress for FY 1989. The LSC Board of Directors adopted this budget mark by a vote of 6 to 5 at its meeting on March 25, 1988.

Mr. Chairman, I believe that I fully understand the sincere motivations behind those in the minority on the Board and those observers who call for a $305.5 million or higher funding level for legal services for the poor. And, as you know, in the past I have supported the $305.5 million level consistently. However, in this instance I believe the Board is justified in adopting the President's budget figure. As I have testified before, the problem is not financial; rather it is structural. The majority of the board feels that until these structural problems endemic to the current system of legal services are adequately addressed, we will have failed in our responsibility to increase the access to justice for the poor that all agree is too low. I am here before you today to ask your assistance in making the changes necessary to achieve our common goals.

As you may know, on December 17, 1987, the Board of Directors of the Legal Services Corporation voted to submit a budget request for FYI 1989 of $305.5 million. On February 18, 1988 President Reagan transmitted his budget to Congress. For the first time since he took office, the President has requested that funds be appropriated for the Legal Services Corporation.

In addition, the President not only adopted programmatic reforms the Board has been seeking since its inception, but went further in calling for the implementation of competitive bidding among providers of legal services. It is these structural changes which should be recognized as the catalyst for achieving our mandate--high quality, economic, and effective legal assistance for the poor.

The President's proposal for LSC in the Budget of the United States Government for 1989 contains three reforms that the Corporation supports as fundamental to increasing access to

First, the President has asked that 96% of all federal funds appropriated for legal services be spent on the direct delivery of legal services to poor eligible clients. There is a consensus that the government help with the specific, day-to-day legal needs of the poor. There is no consensus that taxpayers should support legal "think tanks" that are committed to a social reform agenda. Local programs can use and hire experts as needed on a case by case basis.

Second, the President has asked that the Legal services

Corporation be made to compete its grants and contracts. Congress has rightfully embraced competition as appropriate in almost all grantmaking and procurement activities. Competition for LSC grants and contracts would inject accountability and discipline into a program where current providers have a nearly irrevocable right to continued federal funding.

Letting bids for services can serve to streamline delivery structures, resulting in significant tax dollar savings, and relieving the government of the burden and cost of an infrastructure necessary for program support and monitoring functions. Under a truly competitive regime a much less burdensome monitoring system would be necessary.

Competition and greater private sector involvement would necessarily bring vital market forces into play, broadening the base of those organizations available to deliver legal services to the poor. Under the Older Americans Act of 1978, grants are not limited to a select group of attorneys, but recognize that a much wider set of individuals exists who are very capable of providing legal assistance to individuals seeking redress before many federal, state, and local agencies. The same can be and should be true for LSC grants.

Finally, the President has asked that the Legal Services Corporation be given $250 million of federal funds for the 1989 fiscal year, which represents a reduction of roughly 15% from the 1988 appropriation. The Board supports this request. When considering whether to support this level of funding, a number of factors can be considered.

1. Legal Services Corporation is a mature program that is well established in the communities and states it serves. The Corporation wants to encourage a reduced reliance on

federal funding, greater participation by the private sector, and greater involvement of state and local government.

2. Broadening the base of service providers coupled with the discipline of competition and the innovations it brings will result in more eligible clients being served at a lower cost with more organizations and individuals serving the needs of the poor.

3. By directing that 96% of funds go to direct delivery of legal services to the poor, scarce federal resources will be concentrated on those who are helping resolve the day-to-day legal problems of the poor. It is important that legal services should be client-centered and client-controlled.

4. The Corporation recognizes that the American people are demanding that we be careful stewards of their money. While $250 million is less than last year's appropriation, it is in the Corporation's opinion still sufficient to continue to provide a stable base of federal support upon which successful programs can grow, particularly since legal services recipients receive an increasingly larger share of their funds from sources other than LSC. The IOLTA program, for example,has grown exponentially since the first programs became operational in 1983. By 1986, IOLTA programs had contributed $79 million to LSC recipients and the IOLTA program continues to grow annually.

5. Finally, the corporation will liberally grant waivers to legal services grantees of their requirement to allocate 12-1/2 percent of their funds to private attorney involvement programs. The PAI requirement successfully increased the involvement of private attorneys in the

delivery of legal services to the poor; with a waiver of the PAI requirement legal services recipients will have an additional $29 million available for direct delivery of legal services by local programs.

The Legal Services Corporation Board of Directors' vote on March 25, 1988 to amend its budget request for FY 1989 raises several issues which I would like to address.

First, the Board carefully considered the budget request it made in February. However, at that time, the Board did not know the President would be including a request to fund Legal Services for the first time.

After the President submitted his budget, the Board decided to evaluate whether its goals of providing access for more poor persons to legal services would be better served by the budget submission already made by the Corporation or the President's budget. The Board concluded that the President's budget contains reforms that the Board has always supported.

The Board has long advocated a restructuring of Legal Services so that whatever federal resources are available are directed to the local level where the services are actually delivered to the poor. The President's budget does this. The Board has long discussed the need for competition to bring costs down and increase efficiency among legal services providers. The President's budget calls for competition. The Board encourages the passage of legislative language restricting lobbying activities. The President's budget adopts that language. The Board has long encouraged the development of alternative sources of funding. The President's budget encourages greater development of other than federal funding.

The Corporation supports the President's budget request for LSC and has submitted this Amended Budget Request for 1989. This budget proposes funding and reforms for the Legal Services Corporation which will ensure that legal services recipients provide a better legal service for the poor.

CONCLUSION

In closing, I would like to reiterate that for the first time during his administration, the President has supported the federal funding for the Legal Services Corporation. He has also adopted principles long held by the LSC Board of Directors--principles we believe will lead to greater access to a much wider range of services made available by a much broader base of providers. These principles underlie our preference toward direct delivery of services, competition for grants among providers, and a greater reliance on expanding non-federal funding for services.

Direct delivery of services ensures greater program responsiveness to community and client needs. Competition for grants ensures greater responsiveness to client needs and induces all legal services providers to offer services imaginatively and efficiently. The client who seeks legal services will benefit.

I must say that the LSC Board of Directors is proud that it has not only succeeded in obtaining the President's support for Legal Services, but the Board is delighted in having the President' endorsement for the structural changes it has sought in Congress for so long. Finally, it is with great hope that I ask you to study our proposals and join with the Corporation and the President in seeking to maximize every opportunity the poor may have in seeking access to our system of justice.

CREATION OF IOLTA

Senator RUDMAN. Let me make an observation. You mentioned in your testimony that IOLTA was created by the State of California because of the expectation that the Legal Services budget would be squeezed. Of course, that is right, and it has been. In fiscal year 1981, LSC got $321 million. In the current fiscal year, $305 million, that is 5 percent less. The inflation rate during that period has been 50 percent. No amount of money, IOLTA or anything else, has made that up up until now. This is an observation that needs to be made.

Let me ask you just a management question. Could you explain to the committee how is it that Professor Uddo was asked to chair a subcommittee on something that you are very interested and we are very interested in, because there has been a lot of controversy swirling around the State and national support centers, a lot of opinion on them. You pick a man with academic credentials to head a subcommittee. He starts a study, and before the study is ever completed, which was his testimony before you got here, before he can ever give his report, the Board takes action which essentially moots the purpose of this committee.

I would like you to explain that briefly, if you could. I don't understand it, and Senator Hollings doesn't understand it. We have had a lot of correspondence from people about that. Why did that happen? Is that good management practice? Three questions.

Mr. DURANT. Which do you want first?

Senator RUDMAN. All three, take them in any order you would like.

Mr. DURANT. There has been testimony on the whole question of National and State support in front of the Board, not just Mr. Uddo's subcommittee, ever since our first meeting in December of 1984. A number of people have testified regarding National and State support.

Certainly, we had hoped that Mr. Uddo's subcommittee would have prepared a report, but there was no specified time period. I think that there had only been two subcommittee meetings, if I am correct, over 10 months.

Frankly, this was no different from our vote in 1986. We were not doing something out of the ordinary or unusual. We had voted this almost identical budget in June of 1986.

Senator RUDMAN. I agree that this Board did nothing unusual for this Board.

I just want to make the observation that you still have not answered my questions. I know that you all had preconceived notions. We all have preconceived notions. There is nothing wrong with that. We all come with prejudices about various facts and ideas and ideology. But this had been a matter of great concern to the Congress. You had come to talk to me about it. I had said, maybe you are right, let's have a study.

You have Professor Uddo start the study and lo and behold, before the study gets done—he only had 8 months, he is not a fulltime person. He said in his testimony that he would have about a year. Maybe something constructive would have come out of it. Maybe you could have come to the committee and said: Here is Professor Uddo, who certainly is no patsy of this Board, who says that we ought to eliminate them, and we ought to replace them with something else.

Instead, you come here with essentially an executive fiat that is done, no study, simply reinforcing the same prejudice that you had from the beginning. Maybe you are right, we don't know that. What do you expect us to do, Mr. Durant? Why didn't you let the man finish his job? Is that a reasonable question?

Mr. DURANT. It is a reasonable question.

Senator RUDMAN. I would like an answer.

Mr. DURANT. Mr. Uddo can certainly continue to do the work, although he has already indicated that he doesn't think it is necessary. If Mr. Uddo thinks that that is inappropriate for us to act on certain information, then he is free to bring that before the Board.

I think also, Senator, that the people who use the local programs are in a better position to make decisions than some faraway professor or Board.

I think that that was the importance of Senator Gramm's initiative. It, in effect, said that if you allocate funds to the local programs, then they can make a determination as to whether certain support services are necessary. They are neither prohibited nor prevented from engaging those services.

Senator RUDMAN. I would hope that Professor Uddo's group, informally, would finish this work, and furnish both to the Board and to the committee what it thinks because coming next year we are going to have to go through all of this again with a different Board, I am sure, with different ideas. I may disagree with theirs as much as I disagree with yours.

We would like some facts. I am all for people's opinions, including my own, but I would like some intellectualizing on the issue, and I don't think we have had it.

Mr. WALLACE. Mr. Chairman, could I offer some facts on the subject?

Senator RUDMAN. Sure.

EFFECTIVENESS OF LOBBY GROUPS

Mr. WALLACE. Having had my own committee hearings on lobbying that had to do with support centers, and having sat in on some of Mr. Uddo's hearings, I can't explain the management decision, but I can explain my vote.

In my committee hearings, we discovered that many national support centers are marketing themselves for private funds as having substantial political expertise. They will say: We are advocacy institutions. We are expert lobbyists. Give us money and we will lobby for you on Capitol Hill and in the State Legislatures. They are still doing that.

We have documents in my committee to show that. That, Senator, is what they were designed to do. We saw documents in Mr. Uddo's subcommittee that back during the Carter Administration, Alan Houseman wrote a wonderful memo saying that the field doesn't know what support centers do, people in the field don't know; what they are here for is advocacy, for lobbying.

This Corporation wouldn't even exist, except that President Nixon said: I will veto the bill unless you get rid of the lobbying centers. Congress did it, and unfortunately Congresswoman Green didn't write her language well enough, and the folks who are here today trying to protect those centers, found the loophole in the language, kept them alive, and here they are.

They are lobbying institutions. They have always been lobbying institutions. Every bit of evidence I have seen says they are lobbying institutions. Committees can meet all day, but I am against it. That is what I voted for, and these are facts.

Senator RUDMAN. Obviously, there are people who disagree with your facts. I am not going to debate with you today, but I am interested to have your feeling on the record. You are a Board member, and we certainly will pay attention to them.

Mr. DURANT. Those facts were on the record before the Board voted.

Mr. UDDO. Let me just say a couple of things, Mr. Chairman.

We were in existence for 8 months. There were two hearings held. There was staff work going on during that time. Just as a rough example, the migrant study took over 2 years to do. I had no thought that something as major as this would be expected to be done in 8 months.

I think, if Mr. Durant wants to be honest, he will say that he wasn't interested in letting that subcommittee run its course and make any sensible proposals. I don't want him to get away with the suggestion that he really was interested, but he just didn't have enough time to let it run its course.

Although nobody is preventing me from going on, it seems rather ridiculous for me to continue in light of the fact that the Board took the action that it did in October.

Mr. Durant put a very nice man, Professor Booker from Notre Dame, in a very unfortunate position when he brought that poor man in for 1 day to try to give a rationale to the Board's decision which was, I think, a terrible decision.

Senator RUDMAN. I am going to go on from this, and I will just make a comment.

I certainly don't fault you for dropping. It is almost like asking the captain of the Titanic to consider new designs in wallpaper for the drawing rooms.

I would ask, for the record, there are a lot of allegations of abuse, and I would like some concrete examples of current abuses, which postdate the appropriation riders prohibiting lobbying, restricting the bringing of class action suits, prohibiting representation of illegal aliens, giving control to boards of directors of legal services to local bar associations.

I would like, whoever wants to give me that, for the record, I would appreciate that.

Mr. WALLACE. Senator, I am going to have to respond to that. Part of the problem is—and we gave this report to the House Committee—due to our inability to use funds to enforce those regulations. The quarterly reports that are required by those regulations in many instances have not been received; in many cases they refuse to provide us information.

I am sure Mr. Bayly will do his best to answer your questions, but you need to understand what we face.

Senator RUDMAN. I will have our staff work with Mr. Bayly, because I have a sense that when I came here in 1981, I had a lot of problems with things that were going on, that I was aware of, but I think we have addressed most of them. I think many of them were wrong. They shouldn't have been done. I opposed them vigorously. I was part of the group that wrote some of the riders to eliminate them. We have no disagreement on that.

What we do have disagreement on, I guess, is how much of that has continued on since that time. I would like the staff to do some work on that and I would like that, if possible, 30 days from now.

GAO REPORT

Let me just go on, Mr. Durant, to a couple of other questions for you. On the action taken by the board on functional accounting last week, are you aware of the GAO report that finds that you cannot support the level of detail contained in your requirement and that the proposal really should not proceed without an independent valuation of it that you don't have.

Are you aware of the GAO report?

Mr. DURANT. There are two answers to your questions. First, I am aware of the GAO report, but I understand it has not been made public and I have not read it.

Senator RUDMAN. Make sure you get it.

Mr. DURANT. I will do it.

The second thing is: I didn't vote to shift the money to functional accounting. I voted against that. I think functional accounting is important to do, but I have not seen the report.

Senator RUDMAN. Do you know whether or not this initiative includes a requirement for keeping time on 15-minute time intervals like some major law firms?

Mr. DURANT. I do not know.

Mr. WALLACE. Mr. Chairman, it was my motion. I had read the GAO report in at least a draft and what I said is: Try to meet the concerns of the GAO report and do it right. I am not an accountant and I didn't tell the staff how to do it, but I think we need this information. I want them to satisfy the GAO and that is exactly what I said to do in Santa Fe.

Senator RUDMAN. Mr. Bayly, you are going to have to implement this, correct?

[Laughter.]

Mr. BAYLY. I guess so, Senator.

Senator RUDMAN. Would you give us for the record within 30 days how you intend to implement that?

Mr. BAYLY. Yes, sir.

Senator RUDMAN. With sufficient details so that we will understand what somebody sitting at his desk in Wilmington, NC, is going to have to do. Some lawyer sitting down there who suddenly gets hit with this regulation now as a requirement, I want to know what that fellow or that woman has to do. I would like that kind of detail.

Mr. BAYLY. Did you pick Wilmington for any particular reason?

Senator RUDMAN. Because I guess he is from Wilmington. He was just sitting there and I figured that was a good place to figure out how people had to keep time.

SELECTION OF LOCAL BOARD MEMBERS

Let me go on to a few other questions. I am really quite interested in this idea of how you are going to pick local board members.

You have a whole new proposal here of national elections to the American Bar by a committee. I have heard all sorts of rumors about it, but all I know is that whatever you have done has stirred up the usual amount of controversy for what the majority of this board does. The local boards are just totally aghast at what you are doing.

Would you please tell us what you are doing so that I can at least understand it, because I have heard all sorts of stories? Very simply state how you want to change the status quo, which we all understand how that is done.

Mr. WALLACE. We do not wish to change the status quo on the selection of local boards. That was a proposal. It was opposed by local bar associations. All we have done is to take previous guidelines on the subject and incorporate them into the regulations.

I am satisfied that the previous guidelines, which forbid gerrymandering, so to speak, have not been enforced. There are plenty of local programs where big bar associations are not representing anything like their proportion of the lawyers in the community. We have forbidden that and apparently we haven't enforced it, but we have forbidden it again in the regulations this time, no change.

STATE SUPPORT CENTERS

What we have done with State support centers is to say that State support center board members should be elected by the State bars. The State bar people that actually came before me said: That part of the regulation doesn't seem to us to be a bad idea. We don't want the responsibility for picking local program members, but State support centers, now that you tell me about it, doesn't sound all that crazy.

You can probably pull out a hundred comments that say it is crazy, but people who came in front of me and talked to me about it said: Now that I understand what you are talking about, it doesn't sound that bad.

NATIONAL SUPPORT CENTERS

All we are doing is saying abide by the McCollum Amendment. Its literal language says you have to have a collection of State, county and municipal bars representing a majority of the lawyers in the country picking your boards. Nobody does that now. We are saying: Do it.

That is very cumbersome and perhaps Congress will want to consider writing some modification of the McCollum Amendment for national support centers, if we are going to continue to have those national support centers.

All we did on that was say: Follow the law the way Congress wrote it.

REPROGRAMMING

Senator RUDMAN. One other question for either Mr. Wallace or Mr. Durant and everybody else is free to comment. Earlier this year the committee denied a reprogramming, you are familiar with that, in which you would have amended a portion of the regulation on governing bodies to prohibit anyone who receives compensation from the legal services program from sitting on the board of any other legal services program.

Interestingly enough, it had a direct effect on New Hampshire legal assistance, since its director sits on the New Hampshire Pro Bono Board of Directors and the Director of the Pro Bono Program sits on the Board of Directors of New Hampshire Legal Assistance.

I found it interesting that you had a monitoring team go up to New Hampshire and visit them earlier this year. They made note of this practice in their report and they concluded the arrangement was effective and permitted the program, to coordinate and eliminate duplication of services.

Since your monitoring team carefully reviewed an on-the-ground arrangement, which is what the amended regulation was directed to, and found that it worked very nicely, then what evidence do you have there is a problem, and what do you propose to do about that?

Mr. WALLACE. As the Chairman of the Regulations Committee, Senator, I wasn't looking for problems, I was looking at the law. The law says: If you receive compensation from a recipient, you may not serve on a board.

The reprogramming letter says that is ambiguous and, if it is ambiguous, we should look at congressional intent. I don't see anything ambiguous about it. It is an indefinite article, it is not a definite article. Anybody who receives money from a recipient is ineligible, as a matter of statute, to serve on any board of our program.

I realize what subsequent legislative history says and, frankly, I agree with those courts that say subsequent legislative history doesn't count. I think the law is the law and that is why we voted to enforce it.

Senator RUDMAN. We will send you some of the problems we have with that in terms of the legislative history on both sides of the timeframe that are ambiguous, because we believe they are, and we will look at your request.

Mr. SMEGAL. Mr. Wallace continues to mischaracterize the McCollum Amendment in several respects, and he has done it again when he indicated in his earlier testimony that the McCollum Amendment requires the Board to be selected from lawyers throughout the county. The word "county" does not appear. It says "locality."

There is very distinct difference of opinion not only on this Board, but throughout this country as to what the McCollum Amendment intended to be, not only on that point, but on the last one also whether it should be "a" or "the."

Senator RUDMAN. Obviously, there are two different views.

This will be the last question I have here, before I get to the American Bar Association witness, because we do have some time problems.

1988 CONTINUING RESOLUTION PROHIBITIONS

The 1988 C.R. prohibited the implementation of that portion of the lobbying regulation, part 1612, which imposes restrictions on the use of private funds that go beyond the restrictions imposed on such funds by the Legal Service Corporation Act.

It has come to our attention, Mr. Bayly, that the Corporation has not informed programs that that portion of the regulation is not in effect.

Is that true and, if it is true, what actions are you going to take or have you taken to comply with the statutory restrictions so that these programs are aware of the fact that Congress has rightly or wrongly segregated these private funds?

Mr. BAYLY. Senator Rudman, I must tell you, frankly, that I was not aware that this was a problem that had repeated itself or had occurred more than occasionally. But, in light of what you say, I will speak with them, Senator, and I will make some direct effort to make sure that a program is not being misinformed.

On the other hand, of course, it is a difficult situation where a law is in effect and remains valid while the Corporation cannot enforce the law with appropriate funds. Still, it does not mean that the Corporation cannot be a forum and more comprehensive in the way of informing programs, and its understanding of situations, so that neither they nor the Corporation find themselves injured.

Senator RUDMAN. All right.

Mr. WALLACE. Senator, as a primary step, I have asked the General Counsel to answer that question because I didn't want us sending out our news after you had seen us. I said, tell me what you believe is enforceable and what you believe is not enforceable in light of the new language and put it in my statement so Congress can see it and everybody can see it.

It is in my statement, the General Counsel prepared it. My quick sense, having read it, is that that is an accurate reading of the law. But it is there before you, and you have a chance to tell us if you think that we are reading the act incorrectly.

Senator RUDMAN. I think what is particularly important, Mr. Wallace, is that the status quo as it is right now, in terms of what the Congress has done, is made known to the various legal services groups, even though there may be some differences of opinion.

PERSONAL SERVICES CONTRACT

This is really a question for either Mr. Durant or Mr. Bayly about the $100,000 personal services contract awarded to Mr. Rowley, the Dean of the George Mason University Graduate School, to study "The Economic and Social Implications of LSC." I have several questions.

We know what the purpose is according to the statement. How did that come about, and did the Board approve the contract; how was he selected and what are his qualifications?

Mr. DURANT. Mr. Bayly.

Mr. BAYLY. Senator Rudman, Professor Rowley, as I understand it, is a distinguished professor at George Mason. I had known about him from the staff. I had spoken about his selection with Chairman Durant.

It came about, I guess ten months ago or so, that he entered into a contract with the Corporation to take an independent, fresh look at the problem that was entrusted to him. He had not previously done work in this specific area, although he had done work in the area around it. But he certainly seemed to me to have the credentials to do the sort of independent and objective work that Chairman Durant, in particular, was concerned to have done.

He is being compensated in installments, it seems to me. He received a certain amount of money at the beginning of his work, midway through his work, and a certain part of it is reserved. I think that it is in three installments.

Mr. DURANT. Is it $100,000?

Mr. BAYLY. It is less than that. I think that it is more like $45,000.

Let me rush to say, I am not certain about that. At one point, he submitted to us a proposal that was close to $100,000, but it was substantially reduced, I believe.

Senator RUDMAN. We will check it, but the school newspaper quotes him as saying that it is $100,000.

Mr. DURANT. We had better go to the source.

Senator RUDMAN. We were rather surprised. It wasn't approved by the Board?

Mr. BAYLY. No, sir, it was not.

Senator RUDMAN. It didn't have to be approved by the Board?

Mr. BAYLY. No, sir, it did not.

Senator RUDMAN. I would like to know the details of the contract.

The reason I asked the question is that I am aware that there have been some statements attributed to the Dean in the Mason Gazette that might indicate that he has some preconceived idea concerning the operation of Legal Services Corporation, and it could be that those statements might give somebody cause to think that maybe his report might not be fair and impartial, which is what you want to buy with that kind of taxpayer expenditure.

Mr. BAYLY. Yes, I am aware of that and I was disturbed by it I suspect as much as you were. At the time, I didn't feel that it was necessary to go to Professor Rowley and ask him whether he subscribed to this, or if it was an accurate report or not. But I have not forgotten about it, and I expect that we will have to take a look at what the professor has done in light of what those statements are. However, it was, of course, just a press release.

Senator RUDMAN. I understand that. I would say to the Board that I would have a problem awarding a contract for the study of whether or not the Senate should ratify the Intermediate Range Missile Treaty, if we were to award the study to some professor if that professor had said some things in the previous few months that said that it was a bad treaty, or it was a good treaty.

So I don't really understand why you would issue a contract to somebody who might have a preconceived notion. The question is not whether it is $40,000 or $100,000, both of those numbers are considered substantial money—probably not here, but certainly in New Hampshire. There are several possible answers to that, but I don't understand it, Mr. Bayly.

Mr. BAYLY. Senator Rudman, Professor Rowley, on the one occasion I met him, assured me that he had no set or preconceived notions and that he could conduct an independent assessment. It was only after the contract period, 4, 5 or 6 months ago, that I heard of these reports and written accounts in the newspaper.

Senator RUDMAN. How did Professor Rowley come to your attention, from Mr. Durant?

Mr. BAYLY. No, I don't believe so. Originally, I believe other staff mentioned him to me.

Senator RUDMAN. Who would the staff be?

Mr. BAYLY. I believe Mr. Williams of the Monitoring Division made mention to me, and maybe Mr. Elgin in the Policy Division may have mentioned him to me.

Senator RUDMAN. Any of the Board Members?

Mr. BAYLY. Only Mr. Durant, but I don't know that he mentioned him by name, but he was certainly aware that we were getting the contract. I discussed the matter with Mr. Durant.

Senator RUDMAN. All right.

Mr. DURANT. I think the professor, although I was not directly involved, is also involved in an evaluation of some of the programs simply as an expert witness. I think his opinions were taken and accepted by the Federal judge who heard the case.

SUBMITTED QUESTIONS

Senator RUDMAN. One of the problems we have had with some of your previous response, we thought we would show you this morning. These have been some of the responses. This is one answer. You people are better than the Pentagon, but I would like those questions that we ask to be responded to fairly concisely.

Mr. DURANT. It is like the Continuing Resolution.

Senator RUDMAN. No, the Continuing Resolution is probably half that size.

[General laughter.]

Senator RUDMAN. I am going to ask now if the Board Members would step back, and I will ask the representative of the ABA to come forward because we are running out of time. Thank you all very much.

Mr. DURANT. Thank you, Senator.

[The following questions were not asked at the hearing, but were submitted to the Corporation for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

FY 1989 BUDGET REQUEST

For the past three years, the Legal Services Corporation has requested a funding level of $305.5 million. Just three months ago, the Board voted for a budget mark of $305.5 million and submitted this request to Congress.

Now after your Board meeting in Santa Fe last week, you come before us with a budget request of $250 million, which represents a cut of some 18 percent.

Question. What evidence has come to the attention of the [LSC] Board during the last three months to justify this sort of cut in funding for legal services to the poor?

Answer. The Board voted in December 1987 to submit a budget request of $305.5 million for FY 1989. In February 1988, President Reagan, for the first time in his Administration, proposed a budget for LSC. The President's budget request and the reforms it contains are consistent with the Board's long-standing goal of increasing access to justice for poor persons.

The LSC budget request allocates 96% of all LSC funds to those programs that actually provide the day-to-day legal needs of the poor. Central to the budget request is its call for competition for grants to legal service providers and for local programs to determine levels of national and state support. Competition will stimulate cost and quality effectiveness so that legal services of the highest possible quality are provided to as many of our nation's poor as possible. Congress already requires bidding in almost all of its programs because it recognizes that competition encourages accountability and efficiency. As for support services, direct providers will have increased flexibility to obtain the amount and type of services needed for their locality.

This budget request also takes into account that legal services recipients are receiving an increasing amount of funds from sources other than LSC. Although LSC's FY 1989 budget proposal for direct funding for basic field recipients is lower than its FY 1988 budget, LSC grantees' projected net income from all sources is expected to be higher for 1989 than for 1988. Total non-LSC funding to LSC grantees has grown from less that $65 million in 1983 to more than $100 million in 1986 (LSC Fact Book 1986 preliminary data). The amount of funds dedicated to legal services from Interest on Lawyers' Trust Accounts (IOLTA) alone has increased from $1.5 million in 1983 to $45 million in 1987 (IOLTA Update). Other legal assistance programs are also increasing. There were, for example, only 96 pro bono programs in operation in 1980; by 1987 that number had increased to more than 580 programs (American Bar Association Private Bar Involvement Directories, 1983-87). In fact, more than 90,000 attorneys, slightly more than ten percent of the nation's lawyers, have enrolled in organized pro bono programs. The number of alternative dispute resolution (ADR) programs has also risen from 10 programs in 1975 to 350 in 1987 (Office of Justice Programs, U.S. Department of Justice). The ADR programs allow clients to settle disputes out of court and avoid costly litigation. As a result of the expansion of these programs, more people will receive free or lower cost legal assistance in 1988 than ever before.

Restructuring national and state support is in order because the field programs have over time developed a substantial body of their own resources--research, brief banks, monographs, manuals and texts--in their areas of concentration over time. Field programs now have immediate on-line access to research material available LEXIS, WESTLAW and similar systems. Commercial services publish a wide array of materials dealing with subject areas common to recipients' practice. Finally, support centers, despite instances of excellent service and superior performance, have duplicated areas of specialization so that use of their services is uneven at best. Cumulatively, these development undermine the rationale for dedicated LSC grants to maintain specialized support centers; rather, a system more flexible and responsive to providers' needs is called for. The Board has itself evaluated the role of support centers on several occasions over the past three years. Studies by LSC personnel and consultants are consistent with the proposal.

Question. The Corporation was established as an independent entity to remove politics from the business of providing legal services to the poor.

Am I correct that you adjusted your request to reflect the amount recommended in the President's Budget for the Legal Services Corporation?

Answer. The LSC Board has long considered reconfiguring the funding structure to concentrate funds on recipients who offer direct delivery of legal services. Like the President's budget, the Corporation's request allows individual recipients to make their own decisions about allocating resources depending on their own specific needs and on the needs of those in their communities. The Board concurred with the President's budget because it championed the long-standing objectives of the Board.

Question. What does this tell us about the independence of the Legal Services Corporation?

Answer. For four years the LSC Board has submitted budgets to Congress which were radically different from the budget requests of the President and others. In the exercise of its discretion, the Board concurred with the Administration's budget for FY 1989. As already noted, the President's proposal adopted long-standing objectives of the Board.

STATE AND NATIONAL SUPPORT CENTERS

On December 11, 1987, Senator Gramm offered an amendment to the continuing resolution requiring that 97 percent of the Legal Services Corporation funds be spent for the direct delivery of services. Passage of that amendment would have dramatically altered the FY 1988 Senate Appropriation Bill provisions and defunded the national and state support centers.

I said during the debate on that amendment that Senator Rudman and I, with the support of this Committee, earmarked funding for those support services, established them as priorities, and expected them to be funded. The full Senate agreed with us and tabled the Gramm Amendment 70 to 28.

Now, here we go again. The numbers have changed, but the thrust has not. Your FY 1989 budget request includes the same funding redistribution that was overwhelmingly rejected by the Senate last winter.

Question. Have you conducted any new studies on the national and state support system in 1987 which now justifies your proposal to eliminate direct funding of these support services?

Answer. The LSC Board has considered the question of funding for state and national support centers on a number of times over the past three years. During this period, the Board has received information from monitoring reports, testimony from expert witnesses, and studies of support issues, such as the 1987 Booker Report and the 1987 CALR Report demonstrating that support centers are often inefficient, underutilized and not focused on local needs. Based on this information the Board has decided that the purposes of the LSC Act are best served by allocating money directly to those local legal services programs that represent individual clients.

The LSC Board believes each local program should be enabled to determine how best to meet the legal needs in its community. With LSC's proposed budget, programs will be able to supplement direct delivery of legal assistance with whatever training and support they consider necessary.

Question. Can you name any organization that supports the funding of the Legal Services Corporation that also supports the abolishment of state and national support centers?

Answer. LSC's proposal is intended not as a punitive measure to abolish support centers, but as an opportunity to maximize services available directly for the poor by enabling legal services programs to tailor services as needed. Programs can hereafter obtain support from centers as well as from other research services that exist nationwide. The consequence for specific support centers will differ since many support centers receive a large percentage of their funding from sources other than LSC--from 40 to 94 percent of their total budgets are from outside sources. Under LSC's proposal, federal funds will be spent only on support services that are needed by field providers. Certainly, the Board in this initiative can exercise its role as a leader in the legal services community.

Question. Isn't it true that every segment of the legal services community and the organized bar opposes your efforts to alter funding in this way?

Answer. Changes in the status quo are likely to be resisted, and respected bar leaders, as well as representatives of field programs, have voiced opposition to the Corporation's recommendation. Nevertheless, the Board is charged with the statutory responsibility of leading the nation in efforts to improve services to the poor and in advocating innovation. Initially the subject of strong opposition, LSC's requirement for private attorney involvement is now approved widely by the legal services community and organizations such as the ABA.

The LSC Act provides that legal services programs are to emphasize local efforts to meet the legal needs of individual communities. Boards of Directors are constituted locally and priorities are established at the community local level. The proposed changes will not only maximize services to the poor but also be consistent with Congressional intent that localities make choices in the allocation of resources.

FIELD OFFICES

In your original budget submission, you requested that funds previously designated for support services be reallocated to basic field programs. You stated that this "increase" in funding would allow those field offices that need support services to obtain them, while at the same time, permitting other field offices to use their additional resources to serve more needy clients.

After reviewing your "revised" budget request, I see that you eliminate funding for support services yet, at the same time, reduce by 8 percent, the amount of funding available for basic field programs.

Question. With a $20 million--or 8 percent--reduction in funding for field programs, how can you guarantee that basic legal assistance to our nation's poor will be maintained?

Answer. The growth in the number of non-LSC funding sources and alternative delivery methods are expected to make up for the proposed reduction. Evidence cited in answer to the first question indicates that this trend will continue. IOLTA programs are presently in effect in 48 states and more alternatives are now available to poor persons in need of legal assistance. The current budget request, moreover, allocates 96% of total funds to delivery of basic legal services to ensure maximum levels of legal assistance to our nation's poor.

Question. How will support services be provided to field offices?

Answer. Basic field programs will have the option of expending resources on providing their own support services or of contracting for support and training services from outside support entities, including existing state and national support centers.

Question. Will field programs be forced to choose between serving equally needy clients?

Answer. No. Equally needy clients will continue to have the same opportunity for service as they had in the past. Each program is required to establish and observe priorities in cases it accepts. In accordance with the LSC Act, basic field programs regularly decide which cases deserve priority, and how best to use their resources to serve the legal needs of the poor in their communities. Under LSC's proposed budget, the local offices will continue to set priorities for use of their funds. Moreover, in many communities there are now alternative sources of legal aid available for indigent clients who in the past may have been unserved. Alternative Dispute Resolution programs, law school clinics, and pro bono efforts provided by local bar associations all serve in hundreds of communities to supplement the legal assistance provided by LSC grantees.

SOUTH CAROLINA IMPACT

The elimination of funding for state and national support centers, combined with a $20 million reduction in funding for basic field programs, will significantly limit the representation of clients in South Carolina. It is through these "support services" that field offices in rural areas are able to provide the expertise necessary to represent poor people on a full range of civil cases.

I would like to include for the record a letter I received from a private practitioner in South Carolina. He illustrates just how our own state support center in Columbia provided him the assistance needed to change state policy regarding Medicaid reimbursement and thus provide a client the eligibility necessary for a liver transplant.

At my request, I have received the following examples from South Carolina field programs which also describe the critical assistance provided them by state and national support centers.

* In July 1987 Toby Edelman of the National Health Law Program participated in a statewide health law training [seminar] conducted by the South Carolina Legal Services Association (SCLSA). Included in this training [seminar] were various materials on nursing homes. Subsequently, Michael Glancy-Piedmont Legal Services in Spartanburg had a client who alleged she had been denied admission to a nursing home because of her race. Michael used the health law training material to obtain a quick and favorable result for his client.

* Jane Osborne, a new staff member in the Palmetto Legal Services - Orangeburg office was representing a low-income family that had placed a thousand ($1,000) dollars earnest money toward a home to be financed by FHA. Due to their financial difficulties they were unable to arrange financing and it appeared that they would not only fail to obtain a home, but lose their earnest money as well. Through the information obtained both from the CSLSA and the National Housing Law Project, Attorney Osborne was successful in obtaining a full refund of their earnest money.

* The Orangeburg Office of Palmetto Legal Services was also involved in representing pregnant Medicaid recipients. In violation of federal regulations the Orangeburg hospital often did not have a physician available who would accept Medicaid payment for the treatment of pregnant women. This had the potential of creating disastrous emergency situations where no local obstetrical or pre-natal care was available for these very vulnerable low-income women. With assistance from both SCLSA and National Health Law Program the Orangeburg office has been able to successfully negotiate an agreement to remedy the situation. While there are still some small points to be resolved in working out a final agreement, the office has been informed that an order will be forthcoming assuring that these women do receive medical care in the

future.

Question. How can you guarantee that services such as these will continue to be provided without the funding of support services and a 20 percent reduction in field offices?

Answer. As stated at the outset, no reduction in overall services is expected. The LSC budget is not designed to abolish support centers or result in an overall reduction in field offices. Rather, the largest percentage of available funds is allocated to the local attorneys who work directly with clients, such as those mentioned in your question. Local attorneys who need services from support groups may acquire them as needed.

Programs through experience develop considerable in-house expertise, especially in their priority areas. Legal technology has advanced to such an extent that many small law offices now have in-house access to a variety of legal materials and information such as LEXIS and WESTLAW. There are also many publishers, experts and other groups, public and private, which provide information on issues of concern to legal services offices. The budget initiative will permit the local programs to respond individually to their changing needs. Under this budget the local programs which are providing assistance to the needy may more effectively allocate their funds to acquire those support services that help them carry out their mandate.

The examples cited support this rationale. For instance, because Palmetto Legal Services handles only a relatively small percentage of health or housing issues, the program could be expected to turn to outside expertise for success in such areas. Under the funding scheme proposed by this budget, the local programs would be able to make their own decisions concerning the type of assistance that is appropriate to their needs. They could, for example, arrange with a local real estate attorney for assistance in the housing case mentioned, for a reduced fee. Also, the private and public groups that provide information on health and housing issues might be consulted. The program would have full discretion for obtaining such support services.

Parenthetically, although Palmetto Legal Services reported a 1987 training on health law in their 1988 refunding application, no mention is made of national support centers having participated; indeed, neither the Senior Citizen Law Center nor the National Health Law Program indicate in their refunding application that they sponsored the training. The applications indicate that Toby Edelman has been an employee of the National Senior Citizens Law Center since 1977.

In short, support services needed by legal services providers will continue to be available.

MANAGEMENT & ADMINISTRATION

Question. On page 33 of your original Budget Request, it states that the Legal Services Corporation board members are not "compensated" for their service by the Corporation.

It has always been my understanding that you are compensated by the payment of a consultant fee for each day you attend LSC board or committee meetings. And, as I recall, the Legal Services Corporation board payments were a very controversial issue in 1982 and 1983.

Do LSC board members receive a consultant fee for the time they spend attending board or committee meetings?

Answer. The General Accounting Office reviewed compensation and expenses paid to Directors in 1982 and found that the payments complied with applicable laws, regulations and policies, though the procedures for making the payments lacked adequate internal controls. At that time Corporation guidelines permitted remuneration not only for meetings but also for study and preparation time.

In 1983, Public Law 97-377 established that no director

> shall be compensated for his services to the Corporation except for the payment of an attendance fee at meetings of the Board at a rate not to exceed the highest rate for grade fifteen (15) of the General Schedule and necessary travel expenses to attend Board meetings.

The Corporation continues to observe the compensation provision of Public Law 97-377. Directors do not receive consultant fees for their work for the Corporation other than attendance fees ($261.00 per day, the daily rate of the highest step for a grade fifteen in 1985), and reimbursement for travel costs.

Question. If so, can you explain the inconsistency of your budget statements?

Answer. The term compensation was used to mean salary or consulting fees as opposed to attendance fees or travel expenses.

Question. Will you tell me, Mr. Durant, Mr. Wallace, Mr. Smegal, Mr. Eaglin and Mr. Uddo what your compensation from the Legal Services Corporation was in 1987?

Answer. The attached travel reports for Chairman Durant, Mr. Wallace, Mr. Smegal, Mr. Eaglin and Mr. Uddo furnish information relative to attendance fees as well as for travel for 1987; functions attended; air fare; and other expenses.

Directors of LSC receive an attendance fee of $261.00 per day for Board and Committee meetings only. When applicable, this amount has been noted under the category "Attendance Fee." [The information follows.]

William Clark Durant, III
Travel Report
1987

DATE	CONFERENCE	AIR FARE	OTHER EXPENSES	ATTENDANCE FEE
January 2-3, 1987	Board Meeting Washington, DC	$178.00	Hotel: $ 71.00 Meals: 11.54	Not Claimed
January 8-9, 1987	Board Meeting Washington, DC	178.00	Hotel: 142.00/2 nights Meals: 11.54	Not Claimed
January 29-30, 1987	Board Meeting Washington, DC	178.00	Hotel: 71.00 Calls: 5.34	Not Claimed
February 5, 1987	Board Business Washington, DC	178.00	Not Claimed	N/A
February 12, 1987	Speech New Orleans, LA	258.00	Not Claimed	N/A
February 17, 1987	Senator Rudman Washington, DC	178.00	Taxis: 13.25 Parking: 4.50	N/A
February 23, 1987	Board Business Washington, DC	178.00	Not Claimed	N/A
March 17, 1988	Board Business Washington, DC	178.00	Not Claimed	N/A
March 20-21, 1987	Board Meeting Asheville, NC/D.C.	506.00	Hotel: 81.00 Meals: 32.36	Not Claimed
April 23, 1987	Board Business Washington, DC	311.00	Not Claimed	N/A
May 6, 1987	Board Business Washington, DC	182.00	Not Claimed	N/A

DATE	CONFERENCE	AIR FARE	OTHER EXPENSES	ATTENDANCE FEE
May 15, 1987*	Board Business Washington, DC	$380.00	Not Claimed	N/A
May 19, 1987	Board Business Washington, DC	182.00	Not Claimed	N/A
May 21, 1987	Board Business Washington, DC	339.00	Not Claimed	N/A
May 27, 1987	Board Business Washington, DC	182.00	Not Claimed	N/A
June 24-27, 1987	Board Meeting Washington, DC	182.00	Hotel: 234.00/3 nights Meals: 32.82 Taxi: 6.50	522.00/2 days
July 14, 1987	Board Business Washington, DC	182.00	Not Claimed	N/A
July 22, 1987	Board Business Washington, DC	182.00	Not Claimed	N/A
August 13, 1987	Board Business Washington, DC	184.00	Not Claimed	N/A
August 19, 1987	Board Business Washington, DC	184.00	Not Claimed	N/A
August 27-29, 1987	Board Meeting Seattle, WA	474.00	Hotel: 169.36/2 nights Meals: 74.24 Taxis: 15.00 Mileage: 12.00 Parking: 9.00	522.00/2 days

DATE	CONFERENCE	AIR FARE	OTHER EXPENSES	ATTENDANCE FEE
August 30-31, 1987	LSC Staff Washington, DC	$295.00	Hotel: 114.98 Taxi: 7.60	N/A
September 1, 1987	LSC Staff Washington, DC	184.00	Mileage: 6.00 Parking: 4.50	N/A
September 4, 1987	Loyola Law School New Orleans, LA	388.00	Meals: 2.25 Taxis: 40.00 Mileage: 12.00 Parking: 4.50	N/A
September 9, 1987	Board Business Washington, DC	184.00	Not Claimed	N/A
September 13-15, 1987	Briefing Bd. Mtg Washington, DC	282.00	Hotel: 167.00/2 nights Meals: 107.41 Calls: 4.75	N/A
September 15, 1987	Board Business Washington, DC	184.00	Not Claimed	N/A
September 16, 1987	Board Business Washington, DC	184.00	Not Claimed	N/A
September 17, 1987	LSC Staff Washington, DC	184.00	Not Claimed	N/A
September 21, 1987	Board Business Washington, DC	N/A	Hotel: 90.00	N/A

DATE	CONFERENCE	AIR FARE	OTHER EXPENSES	ATTENDANCE FEE
September 29, 1987	Board Business St. Paul, MN	$342.00	Not Claimed	N/A
October 1-2, 1987	Board Meeting Washington, DC	220.00	Hotel: 75.00 Meals: 14.30* Meal: 19.72 Calls: 4.50* *Incurred by Durant but not claimed	Not Claimed
October 5-6, 1987	Board Business Washington, DC	330.00	Not Claimed	N/A
October 9, 1987	Board Business Washington, DC	220.00	Not Claimed	N/A
Octpber 21, 1987	Board Business Washington, DC	220.00	Not Claimed	N/A
October 25, 1987	Board Business Washington, DC	110.00	Hotel: No chg. to LSC Taxi: 4.50 Mileage: 6.00	N/A
October 26, 1987	Dedication to Justice Ceremony Drake University Des Moines, IA	304.00	Taxis: 7.60	N/A
October 26-27, 1987	Board Business San Francisco, CA	See above	Hotel: 122.10/2 nights Taxi: 36.00 Meal: 4.50	N/A

DATE	CONFERENCE	AIR FARE	OTHER EXPENSES	ATTENDANCE FEE
October 28, 1987	Board Business Houston, TX	$315.00	Hotel: 140.22 Meals: 36.74 Taxi: 7.70 FAX copy: 9.00 Calls: 1.50	N/A
October 29, 1987	Board Business South Bend, IN	No cost to LSC	Meal: 14.88 Taxi: 7.00 Mileage: 6.00 Parking: 18.00	N/A
	Return to Detroit	119.00		
November 1-2, 1987	Congressional Staff and Heritage Found. Washington, DC	220.00	Hotel: no cost to LSC Meals: 8.55 Taxis: 35.00 Mileage: 12.00 Parking: 4.50	N/A
November 18-19, 1987	Board Business Washington, DC	220.00	Not Claimed	N/A
December 10, 1987	Board Business Washington, DC	184.00	Not Claimed	N/A
December 17-18, 1987	Board Meeting Charleston, SC	316.00	Hotel: 69.55 Meals: 18.26 Calls: 12.89 Mileage: 12.00 Taxis: 32.00 Parking: 7.00	522.00/2 days

Paul B. Eaglin
Travel Report
1987

DATE	CONFERENCE	AIR FARE	OTHER EXPENSES	ATTENDANCE FEE
January 2-3, 1987	Board Meeting Washington, DC	204.00	Hotel: 71.00 Meals: 27.88 Metro: .85 Taxi: 6.80 Parking: 5.00 Tips: 5.86	522.00/2 days
January 8-10, 1987	Board Meeting Washington, DC	180.00	Hotel: 71.00 Meals: 30.40 Parking: 6.50 RentCar: 75.69 Tip: 1.59	261.00
January 29-30, 1987	Board Meeting Washington, DC	248.00	Hotel: 71.00 Meals: 28.36 Metro: .80 Taxi: 6.80 Tips: 6.70 Parking: 6.50	522.00/2 days
March 20-21, 1987	Board Meeting Asheville, NC	- 0 -	Hotel: 36.72 Meals: 16.41 Rent Car:49.40 Gas: 17.00 Parking: 5.75	261.00
June 25-27, 1988	Board Meeting Washington, DC	212.00	Hotel: 156.00/2 nights Meals: 47.20 Metro: 1.60 Taxis: 24.00 Tips: 7.13 Parking: 6.50 Call: 0.75	522.00/2 days

Paul Eaglin
Travel - 1987
Page Two

DATE	CONFERENCE	AIR FARE	OTHER EXPENSES	ATTENDANCE FEE
August 8-10, 1987	ABA Consortium San Francisco, CA	- 0 -	Hotel: 110.00/2 nights Meals: 45.61 Rent Car:27.93 Call: .50 Tip: 4.11 Parking: 5.50	N/A
August 27-29, 1987	Board Meeting Seattle, WA	552.00	Hotel: 84.68 Meals: 52.78 Bus: 10.00 Tips: 6.68 Parking: 8.00	522.00/2 days
October 1-2, 1987	Board Meeting Washington, DC	212.00	Hotel: 75.00 Meals: 52.10 Rent Car:82.08 Tips: 7.78 Parking: 12.10	522.00/2 days
November 19-20, 1987	Board Meeting Philadelphia, PA	302.00	Hotel: 105.45 Meals: 52.58 Train: 8.00 Calls: 1.00 Tip: 1.25 Parking: 7.00	522.00/2 days
December 16-18, 1987	Board Meeting Charleston, SC	- 0 -	Hotel: 139.10/2 nights Meals: 60.70 Mileage: 70.00 Gas: 31.00 Tips: 6.97 Parking: 11.00	522.00/2 days

Basile J. Uddo
Travel Report
1987

DATE	CONFERENCE	AIR FARE	OTHER EXPENSES	ATTENDANCE FEE
January 3, 1987	Board Meeting Washington, DC	$388.00	Meals: 16.45 Tip: 1.59 Taxis: 17.00 Parking: 4.00	261.00
January 7-9, 1987	Board Meeting Washington, DC	318.00	Hotel: 142.00/2 days Meals: 34.75 Tips: 1.59 Calls: 3.50 Taxis: 24.50 Parking: 10.50	261.00
January 13-14, 1987	New England Bar Association	429.00	Hotel: 82.28 Meals: 52.65 Calls: 5.33 Taxis: 26.00 Parking: 8.00	N/A
January 28-31, 1987	Board Meeting Washington, DC	258.00	Hotel: 199.00/3 nights Meals: 62.45 Tips: 4.00 Taxis: 41.00 Parking: 12.50	522.00/2 days
March 7, 1987	Board Meeting New Orleans, LA	- 0 -	Meals: 10.55 Parking: 8.50	261.00
March 13-17, 1987	LSC Staff re support centers & law school clinics Washington, DC	334.00	Hotel: 160.00/4 nights Meals: 25.00 Calls: 4.50 Taxis: 87.50	N/A

DATE	CONFERENCE	AIR FARE	OTHER EXPENSES	ATTENDANCE FEE
June 11-12, 1987 New York, New York	Bar Assn./New York	510.00	Hotel: 200.19 Meals: 12.75 Calls: 8.40 Taxis: 29.00 Parking: 10.00	N/A
June 25-27, 1987	Board Meeting Washington, DC	328.00	Hotel: 97.80 Meals: 52.00 Tips: 4.00 Calls: 2.25 Taxis: 31.00 Parking: 15.00	261.00
August 6-8, 1987	Boad Meeting San Francisco, CA	614.00	Hotel: 110.00/2 nights Meals: 256.80 Tip: 30.58 Taxis: 50.00 Parking: 10.50	261.00
August 27-29, 2987	Board Meeting Seattle, WA	660.00	Hotel: 84.68 Meals: 42.76 Tips: 7.38 Taxis: 48.00	522.00/2 days
September 24-25, 1987	LSC Staff & Bd. Washington, DC	310.00	Hotel: 55.00 Meals: 86.84 Tips: 12.00 Taxis: 23.10 Parking: 10.00	N/A

DATE	CONFERENCE	AIR FARE	OTHER EXPENSES	ATTENDANCE FEE
October 1-2, 1987	Board Meeting Washington, DC	490.00	Hotel: 82.50 Meals: 28.34 Tips: 2.72 Calls: 4.50 Taxis: 16.00 Parking: 12.00	522.00/2 days
November 12-13, 1987	LSC Staff Washington, DC	490.00	Hotel: 84.00 Taxis: 26.00 Parking: 7.00	N/A
December 17-18, 1987	Board Meeting Charleston, SC	580.00	Hotel: 69.55 Meals: 45.65 Tip: 2.12 Taxis: 25.00 Parking: 10.00	522.00

Thomas F. Smegal, Jr.
Travel Report
1987

DATE	CONFERENCE	AIR FARE	OTHER EXPENSES	ATTENDANCE FEE
January 2-3, 1987	Board Meeting Washington, DC	$952.00	Hotel: 71.00 Meals: 35.95 Tip: 1.59 Taxis: 10.00 Rent Car:29.30 Parking: 22.00	Waived
January 8-9, 1987	Board Meeting Washington, DC	302.00	Hotel: 71.00 Meals: 14.95 Tip: 1.59 Taxi: 5.00 Rent Car:42.20 Parking 6.00	Waived
January 28-30, 1987	Board Meeting Washington, DC	345.00	Hotel: 142.00/2 nights Meals: 53.00 Tips: 10.00 Taxi: 5.00 Rent Car:80.94 Parking: 21.50	Waived
March 17-19, 1987	LSC & Congressional Staff & ABA Personnel re 1986 Immigration Act Washington, DC	170.00	Hotel: 77.51 Meals: 12.00 Rent Car:40.47 Parking: 14.75	N/A
March 20-21, 1987	Board Meeting Asheville, SC	244.00	Hotel: 81.00 Meals: 37.00 Tip: 2.00 Taxis: 5.00 Rent Car:41.79	Waived

Thomas F. Smegal, Jr.
Travel Report - 1987
Page Two

DATE	CONFERENCE	AIR FARE	OTHER EXPENSES	ATTENDANCE FEE
May 10-11, 1987	Senate Appro. Subcommittee Washington, DC	145.00	Hotel: 78.84 Meals: 16.00 Taxi: 5.00	N/A
May 19-20, 1987	Senate Appro. Subcommittee Washington, DC	376.00	Hotel: 78.84 Meals: 8.00 Taxis: 18.00 Calls: 6.73	N/A
June 25-26, 187	Board Meeting Washington, DC	290.00	Hotel: 78.84 Meals: 40.50 Tip: 8.12 Taxis: 49.00 Parking: 22.00	Waived
August 7, 1987	Board Meeting San Francisco, CA	- 0 -	Meal: 15.95 Parking: 13.00 Tip: 3.58	Waived
August 27, 1987	Board Meeting Seattle, WA	178.00	Meals: 14.00 Taxis: 60.00 Parking: 11.00	Waived
October 1-2, 1987	Board Meeting Washington, DC	406.00	Hotel: 83.22 Meals: 9.00 Taxis: 27.00	Waived
October 22, 1987	LSC Staff Washington, DC	87.00	Car Rent:20.00	N/A

DATE	CONFERENCE	AIR FARE	OTHER EXPENSES	ATTENDANCE FEE
November 18-20, 1987	Board Meeting Philadelphia, PA	386.00	Hotel: 210.90 Meals: 52.00 Tip: 5.00 Taxis: 47.00	Waived
December 3-4, 1987	ABA SCLAID Mtg. Miami, FL	386.00	Parking: 22.00 Taxis: 10.00	N/A
December 17-18, 1987	Board Meeting Charleston,, SC	646.00	Hotel: 69.55 Meals: 48.20 Tip: 2.12 Taxis: 30.00 Parking: 22.00	Waived

Michael B. Wallace
Travel Report
1987

DATE	CONFERENCE	AIR FARE	OTHER EXPENSES	ATTENDANCE FEE
January 2-3, 1987	Board Meeting Washington, DC	$328.00	Hotel: 71.00 Meals: 42.00 Tips: 6.69 Calls: 3.00 Taxi: 8.00 Parking: 7.00	522.00/2 days
January 9, 1987	Board Meeting Washington, DC	328.00	Meals: 21.00 Tips: 4.09 Taxi: 8.00 Parking: 3.50	261.00
January 29-31, 1987	Board Meeting Washington, DC	198.00	Hotel: 142.00 Meals: 41.61 Tips: 8.00 Taxis: 22.00 Calls: 2.25 Parking: 10.00	522.00/2 days
February 21-23, 1987	LSC Staff Washington, DC	198.00	Parking: 10.50 Meals: 19.00 Car Rent:60.19 Taxis: 21.00	N/A
March 6-7, 1987	Board Meeting New Orleans, LA	- 0 -	Hotel: 55.00 Meals: 35.32 Tips: 7.10 Parking: 8.75 Mileage:108.00	261.00

Michael B. Wallace
Travel Report - 1987
Page Two

DATE	CONFERENCE	AIR FARE	OTHER EXPENSES	ATTENDANCE FEE
March 20-21, 1987	Board Meeting Asheville, NC	469.00	Hotel: 81.00 Meals: 35.12 Tips: 7.60 Taxis: 20.00 Parking: 7.00	261.00
May 14-15, 1987	Testimony before Senate Appro. Com. Washington, DC	310.00	Taxis: 9.50	N/A
May 19-20, 1987	LSC Staff Washington, DC	449.00	Hotel: 100.00 Meals: 17.39 Tips: 2.50 Calls: 1.20 Taxis: 22.50 Parking: 3.50	N/A
June 25-27, 1987	Board Meeting Washington, DC	343.00	Hotel: 140.00/2 nights Meals: 58.16 Tips: 5.91 Taxis: 26.00 Parking: 7.00	522.00
August 6-8, 1987	Board Meeting San Francisco, CA	711.00	Hotel: 110.00/2 nights Meals: 60.51 Tips: 9.99 Parking: 21.50 Rent Car:42.29	261.00

DATE	CONFERENCE	AIR FARE	OTHER EXPENSES	ATTENDANCE FEE
August 27-29, 1987	Board Meeting Seattle, WA	1019.00	Hotel: 169.36/2 nights Meals: 83.40 Tips: 21.38 Taxis: 67.00	522.00/2 days
November 19-20, 1987	Board Meeting Philadelphia, PA	665.00	Hotel: 105.45 Meals: 62.21 Tips: 10.29 Parking: 29.50	522.00/2 days
December 16-18, 1987	Board Meeting Charleston, SC	610.00	Hotel: 139.10/2 nights Meals 71.66 Tips: 16.11 Taxis: 15.00 Parking: 10.50	522.00/2 days

MANAGEMENT AND ADMINISTRATION

Your original request for the Legal Services Corporation's Management and Administration budget was $14.5 million. This reflected a 38 percent increase and was based, in part, on 222 staff positions.

Two days ago, you submitted an amended request of $9 million for management and administration, which reflects a 7 percent decrease in funding.

Question. Can you explain the difference in your budget request if you assume a staffing level of 222 under both proposals?

Answer. The level of 222 staff positions was first established as the highest level of staffing by the Corporation 1985. Not all authorized positions, of course, are filled at all times. The Corporation has recently operated below this level because of the restructuring of Management and Administration, which resulted in increased centralization and a refashioning of the Offices of Monitoring, Audit and Compliance, and the Office of Field Service.

Question. I understand the Corporation currently has only 123 permanent staff on board. Are you planning to fill these vacancies?

Answer. The Corporation is filling a number of vacancies now. However, because many of its tasks are short-term in nature, the Corporation continues to rely on temporary staff to respond to many demands--such as monitoring--rather than additional full-time staff. This flexibility permits the Corporation to make effective use of its resources.

Question. Or, do you plan on continuing the pattern of the past three years, whereby some 100 positions remain vacant within the Corporation?

Answer. The Corporation's 123 permanent staff, which is being increased now, is supplemented by a pool of more than 300 consultants with varying expertise available on a temporary basis. This pool of temporary employees affords the Corporation considerable flexibility in responding to staffing demands. If the Board's FY 1989 budget is passed, a certain readjustment of administrative responsibilities will follow, for instance, to accommodate the competitive bidding process.

Question. What would be your request for the funding of Management and Administration if you held your staffing to the actual level of positions filled in FY 1988?

Answer. The budget proposal for Management and

Administration contemplates that introduction of competition into grant awards will in the aggregate reduce the demands on Corporate staff.

If the regular and temporary staffing were held to the actual level of positions filled in FY 1988, and if no structural reforms were introduced, then the Management and Administration budget would be somewhat higher than the consolidated operating budget for FY 1988.

QUESTIONS SUBMITTED BY SENATOR RUDMAN

BASIC DISPUTE RESOLUTION

The President's request defines "direct delivery of legal services to poor eligible clients" as "the provision of basic dispute resolution services to eligible clients through local grant recipients whose purpose is to provide direct delivery of legal assistance to eligible clients". This same definition was contained in Senator Gramm's amendment of last year.

Question. Mr. Durant, since the Gramm Amendment was designed to carry out your revised funding proposal put forward on a motion a year ago, perhaps you could tell us what is meant by "basic dispute resolution." Is basic dispute resolution, in your view, the same as alternative dispute resolution?

Answer. Basic dispute resolution includes both traditional and alternative dispute resolution methods. "Basic" means both "direct" and "fundamental" legal services.

The budget requests that $241,000,000 be used for the "direct delivery of legal services to poor eligible clients" (direct delivery). Direct delivery is then defined as "basic dispute resolution services," which includes traditional dispute resolution services as well as ADR. Indeed, the appropriation is made to "carry out the purposes of the Legal Services Corporation Act of 1974," and clearly contemplates funding traditional legal services.

Question. Does basic dispute resolution, in your view include litigation?

Answer. As explained above, the term "basic dispute resolution" includes litigation.

Question. Since we have no current support material in front of this committee, perhaps the Board members present could enlighten us as to whether adopting the President's budget request also includes adoption of the language contained in the Budget Appendix?

Answer. Yes, the Board's request includes reference to the language contained in the Budget Appendix.

COMPETITIVE GRANT AWARDS

The President's budget request includes a bill language proviso requiring that grants to local recipients be awarded competitively at least every three years.

Question. Is the Board recommending the competitive award of grants to local legal services providers?

Answer. Yes, the Board is recommending that grants be awarded to local legal services recipients on a competitive basis. This proposal creates an element of efficiency which enhances the delivery of legal services for the needy. Competitive bidding also provides an incentive for attorneys to provide for their clients in the most efficacious manner. In a competitive setting, only those providers who effectively and professionally satisfy the demands of needy clients will be selected. This proposal would, therefore, enhance program accountability as well as increase the quality of legal services to clients.

Question. Would such a proviso undermine the stability of an effective delivery system of legal assistance to indigent clients?

Answer. The stability of effective delivery systems would not be undermined through the use of grants put up for competition once every three years. After all, standard practice for more than 31 federal agencies. Moreover, no characteristics inherent in the delivery of legal services hamper the use of competitive bidding. In fact, Federal and state programs already allocate certain funds for the delivery of legal services through competitive bids.

For instance, each year the Department of Health and Human Services, through the Administration on Aging, allocates funding for the delivery of legal services to the elderly. Funds under Title IV are allocated under the Comprehensive Federal Program competition. This year alone the program allocated one million dollars to the delivery of legal services for the elderly. The Administration on Aging also oversees grants to individual state Area Agencies on Aging. A significant percentage of these funds are allocated to enhancing access to justice for the elderly. Generally, such funds are allocated on a competitive basis.

Analogously, for indigent criminal defense, state jurisdictions use a competitively bid contract system to select indigent defense counsel.

Furthermore, LSC itself has used competitive grants for a variety of purposes. For the past five years, for instance, LSC has awarded funding for law school clinics on a competitive basis. Using this process, more than $4.5 million has been awarded in 75 separate grants. The benefits to be had from competitive bidding generate efficiencies which ultimately benefit the needy client. Both existing service providers and potential service providers have an additional incentive to meet the demands of needy clients effectively and efficiently.

Question. Your regulation requires for the first time that a political test be applied in the selection of governing board members, with the requirement that no more than 60% of a governing body may be members of the same political party. What assurance can you give me that this provision will not unnecessarily politicize the appointment process, focus attention on party affiliation and highlight political differences among board members rather than concentrating on board members' commitment to and knowledge of the delivery of legal services?

Answer. The LSC Board believes that requiring a political balance on recipient governing boards reinforces good governance and advances the aims of the Act by assuring that client needs will not become subject to factionalized concern or ideology, rather than remaining the concern of the entire local bar and community.

LSC was established as a private, non-profit corporation in order to remove legal services from political interference and control. To further that end, Congress established a bipartisan board at the national level to ensure freedom from domination by one political party. LSC believes that a bipartisan requirement for local recipient boards will further the same interests. Moreover, there is no reason to believe that appointing bars will give more attention to party affiliation than they do to the other requirements, such as a potential member's commitment to and knowledge of the delivery of legal services. The benefits gained by ensuring balanced representation in the governing process outweigh the minimal attention that will be given to party affiliation by the appointing organization.

Question. Has the Corporation conducted an analysis of individual program boards to determine whether one political party currently dominates the composition of governing bodies or are we simply "fixing something that isn't broke"?

Answer. LSC has not previously requested recipients to identify the political affiliation of their board membership.

PUBLIC AFFAIRS

Mr. Bayly, your budget justification indicates that one employee in the Office of Policy Development is designated to provide the Board and members of Corporate staff with published information concerning LSC and its recipients. One of the major ways is through the production of a monthly publication titled "News Clippings." I have reviewed the mid-December to January version of this publication and was surprised at what I found. Few of the clippings had anything to do with legal services or the LSC itself. Of the 107 press clippings in publication, more than half (58) dealt with the confirmation travails of judicial nominees. Of the 107, only 18 are about local legal services programs and only one is about the Legal Services Corporation.

Question. What relevance do articles about Supreme Court appointments have to the LSC Board and staff, other than general interest?

Answer. You are correct in your observation that the mid-December to January edition of "News Clippings" sent to the Board of Directors had little to do with legal services or LSC itself. Because of clerical error, the wrong material (i.e., what had been excised) was sent to the Board instead of what had been culled by LSC staff for inclusion. The material you refer to consisted of articles rejected precisely because they did not provide the Board with published information concerning LSC and its recipients. This incident is unfortunate and verifiably atypical of information sent to the Board. Needless to say, it has prompted more stringent review procedures.

Question. How much is spent on this activity per year?

Answer. The actual production cost of the publication is minimal. LSC has contracted a clipping service to provide a monthly press compilation of legal services-related news for a base, monthly fee of $159.00, plus 85 cents per clip. In addition, a member of the staff of the Office of Public Affairs has among other substantive duties the responsibility of selecting and compiling articles for the daily in-house issue, which is sent to LSC officers, Division Directors and Managers, as well as the monthly compilation, which is sent to Board members.

Question. Would you consider this an inappropriate expenditure given the political nature of the majority of the clippings?

Answer. "News Clippings" is designed to be an objective and informative service for Board members and senior staff of the Corporation. Funds allocated for this service are not only appropriate but necessary to keep the Board and senior staff abreast of news directly concerning the legal services community.

Question. I am disturbed that you seem to be missing most of the news about legal services and LSC. For instance, during this period, the Washington Post and the New York Times reported that President Reagan had decided to support an appropriation for LSC for the first time, yet these articles were not included in this publication. How do you explain this?

Answer. As stated earlier, the edition of "News Clippings" to which you refer was unrepresentative of the purpose or content of this service. The Office of Public Affairs receives on average 10 to 15 articles a week about developments affecting local legal services. A member of the staff reviews The New York Times, The Washington Post, and The Wall Street Journal, among other publications, on a daily basis for articles dealing with the Corporation on a national level.

PRIVATE LAW FIRM PROJECTS

Question. Between 1984 and 1986, LSC signed 58 contracts with private law firms to provide legal services to individual clients. At last year's hearing, I was told that an interim project evaluation would be issued in July of 1987 which would explain the very slow progress being made by the law firms and evaluate the success or failure of the project.

- Has an interim project evaluation been completed? What is the status of this project?
- How many grants are still in existence?
- How many law firms have completed their contract obligations?
- Do you have any plans to contract with any other private law firms for the provision of services to clients?

Answer. LSC was a direct party to 49 contracts operated under the Private Law Firm Project. Additionally eight contracts have been entered into between an LSC local program, Jacksonville Area Legal Aid in Jacksonville, Florida, and private law firms or attorneys under a grant from LSC. Thus, a total of 57 contracts currently comprise the Private Law Firm Project.

Of the 57 contracts, client service is still being provided under 42 contracts and 15 contracts have reached closure. Nine contracts are very near completion, with an average of approximately $300.00 remaining in each of the contract accounts. Approximately 33 contracts may expire with less than full service having been provided. An interim project evaluation has been completed and is being reviewed by executive staff prior to its release. The entire Private Law Firm Project is scheduled for closure at the end of May 1988.

LSC entered into one-year contracts with private attorneys or law firms that included a one-year, no cost, extension provisions. The extension provision was utilized to enable contractors to complete the full level of case service bid for, in the event that the incidence of need, as indicated by the local programs, did not materialize within the one-year contract period. The estimates of need provided by the programs were generally greater than the actual number of referrals the programs were able to generate within the one-year contract period. Thus, each contract was extended at least once. This has substantially contributed to what has been perceived as "slow progress."

At the current time LSC has no plans to contract with other private law firms or attorneys under the PLFP or otherwise.

ANNUAL REPORT

Section 1008(c) of the Legal Services Corporation Act requires that LSC publish an annual report, and file that report with the President and the Congress. Last year in response to one of my questions, the Corporation indicated that the last time an annual report was published was 1983 but that a report would be filed in 1987 to cover the intervening years. The Corporation went on to indicate that the failure to file these statutorily-required reports was a result of an "oversight during a period of transition in LSC management."

Question. Was an annual report prepared and filed during 1987?

Answer. The Corporation is in the midst of preparing an annual report for 1987 that will also include an overview of the previously unrecorded years. As soon as it is in final form it will be presented to the Congress and the President, as required by the Act.

Question. Failure to file a report is a violation of the Act. What steps has the Corporation taken to comply with this statutory provision?

Answer. As stated above, the Corporation is currently engaged in the preparation of an annual report for 1987 and the preceding years. Under the direction of the Secretary of the Corporation, the staff is now taking the necessary steps to fulfill this mandate in a timely and professional manner.

LSC FACT BOOK

Question. To my knowledge, LSC hasn't produced a Fact Book since 1985. As you know, the Fact Book that your predecessors produced contained a large quantity of data on the status of LSC-funded programs (numbers and types of cases, average salaries, funding by state, sources of outside funds, and so on). When questioned about this last year, the Corporation indicated it would produce a Fact Book in 1987.

- Has this commitment been kept? If not, why?
- Has a decision been made at the Board or staff level not to produce a Fact Book?
- When can we expect the Corporation to produce a Fact Book?

Answer. Both the LSC Board of Directors and LSC staff fully support the public release of national statistical information concerning grantee services and operations.
The Corporation recently completed a first draft of the 1987 Fact Book; a final product is expected by August 1988. Because LSC continues to collect grantee data manually, verification checks, which are essential to ensure data reliability and accuracy, have been slow. Efforts to automate the Corporation's data collection systems were suspended pending the conclusion of a recent General Accounting Office investigation. The Corporation believes that automation will help to provide comprehensive, timely and accurate information to Congress, the Board, Corporate staff, LSC grantees, and the general public.

1988 REFUNDING OF LSC GRANTEES

Question. The Corporation was over two months late this year in refunding grantees. It is my understanding that annual grants were not issued until approximately March 1. Can you explain what caused you to be two months late in refunding of your grantees? I realize that Congress was late in finally adopting a Continuing Resolution, but I am also aware that the Project Advisory Group provided a computer run at the request of the Corporation to facilitate timely grant awards.

What steps have you taken to see that this does not happen again?

Answer. In the past, the annualization process has required six to eight weeks to complete. Accordingly, in June 1987 the Corporation's Office of Field Services adopted a schedule with the goal of completing the 1988 refunding process by December 18, 1987.

LSC refunding applications were received and reviewed by Corporation staff during November 1987. As the Corporation's 1988 appropriations level had not been established by mid-December 1987, the Corporation in accordance with Section 1007(a)(9) of the LSC Act decided to award interim funding to each grantee for the month of January 1988 so that recipients would not experience a delay or disruption in funding pending final determination of LSC's 1988 funding level.

In a further effort to minimize the impact of the delay in annualized funding, the Corporation awarded interim grants equivalent to two-twelfths of each grantee's 1987 annualized level. The ten recipients that were on interim funding status were provided only one-twelfth of the 1987 annualized level. This was in accordance with the Corporation's practice of providing grantees with the equivalent of two-months of funds in January of each year.

The bill appropriating LSC funds for 1988 was enacted on December 23, 1987, and contained certain new language regarding the funding formula for basic field grants. By letter dated January 4, 1988, members of the Conference Committee on LSC's 1988 appropriations clarified the intent of the conferees with respect to the formula.

Shortly after receipt of the letter, the Corporation provided a computer print-out of the anticipated 1988 annualized funding levels to each grantee and the Project Advisory Group (PAG). PAG did not send a print-out to the Corporation because the 1988 levels are identical to the 1987 levels.

The bill appropriating the Corporation's 1988 funding had not been enacted when the LSC Board of Directors met on December 19, 1988. At that meeting, the Board directed the staff not to sign annualized grant contracts until after the LSC Board of Directors convened at its annual meeting set by law for January 29, 1988. Accordingly, each grantee was awarded an additional one-month grant for February 1988 while the Corporation completed the refunding process after the January 29, 1988, meeting of the LSC Board of Directors. No interruption in funding was caused any grantee.

It remains the Corporation's intention to be responsive to the needs of recipients and the clients they serve, and to use its best efforts under any circumstance to ensure that the annualization process is completed as quickly as possible. Absent any unforeseen circumstances beyond the Corporation's control, this should ensure that the 1989 refunding process will be completed on a timely basis.

SIX-MONTH GRANTS

Question. Mr. Bayly, I understand that you decided in early March to place seventeen of your recipients on a six-month grant, rather than a full year's grant, because of concern about some aspect of those program's operations.

Please describe the process used to determine that a program will not receive a full year grant.

Who, or what Division of LSC, recommended that these grants be short-funded? I would like to know who at LSC is responsible for these recommendations.

What prior notice did these programs receive that they would not get a full year's grant?

It is my understanding that many of these programs were not told at the time the letters were sent specifically why the program was being disciplined and what steps needed to be taken to resolve the problem. Why were these programs not given specific information concerning their new funding status?

Answer. The process utilized by the Corporation to determine whether a program will receive annualized funding at the beginning of the calendar year is ongoing throughout the course of the preceding year. For example, the Corporation's monitoring review of programs may identify particular compliance concerns or, perhaps, management or fiscal inefficiencies that suggest the need for closer scrutiny. In addition, some programs may be required to observe certain special grant conditions even though an annualized grant has been awarded.

For the grants made for 1988, the Office of Monitoring, Audit, and Compliance (MAC), the Office of General Counsel (OGC), and the Office of Field Services (OFS), reviewed and analyzed findings identified during monitoring reviews and information provided by the programs in their 1988 Applications for Refunding. In addition, LSC reviewed audit reports and other documents submitted by programs. Finally, LSC reviewed the progress made by programs that were implementing corrective action plans in 1987. Subsequent to these reviews, LSC assessed the seriousness of the issues raised, and the available options to address the concerns of the Corporation while ensuring that client services remained uninterrupted.

In mid-December, due to the delay in receiving an appropriation, the Corporation decided to issue one-month grant awards at the 1987 funding level to all programs. Once the appropriation was received in January 1988, the LSC's Board of Directors at its at its annual meeting of January 29, 1988, instructed staff to provide annualized funding to all programs that were in compliance with the LSC Act and regulations.

In response, MAC, OGC and OFS reassessed earlier reviews to identify the compliance status of all programs. This reassessment focused on a program's compliance with particular regulations, such as 45

C.F.R. Sections 1607 and 1614, as well as programs' compliance with corrective action plans, general management practices, and auditing and accounting standards. The staff marshalled available information indicating compliance problems and submitted such information, together with back-up documentation, to the Executive Office for consideration.

Based on assessment of available information, decisions were made with respect to whether these programs would receive interim funding. The President was to make the final decision with regard to which programs, if any, were to be placed on interim funding. The status of the programs receiving interim funding has been reviewed periodically since then. and the number of subprograms has been reduced from 17 to 13.

As a result of review and assessment, grant award letters were forwarded to the programs slated to receive short-term funding. The letters briefly explained the reason why annualized funding would not be provided. In certain instances, general language was used due to the fact that details were based on a program's draft monitoring report which is a confidential document.

Prior to notification by letter, the chair of the board of directors and the executive director of each program placed on short-term funding received a phone call from the Corporation. Each was given the reason that their program was being placed on short-term funding status. In addition, assistance regarding corrective measures to be taken was offered.

Seven of the grantees that were notified of 1988 short-term funding status had been on short-term funding during 1987. Two others were under investigation by federal law enforcement officials. Seven other grantees had been advised of LSC concerns pursuant to on-site monitoring reviews during 1987 and early 1988 and/or monitoring reports issued during 1987 or early 1988. At least one of these grantees had been advised of LSC's concerns over a period of years but had failed to take corrective action.

Three grantees were placed on short-term funding for reasons other than non-compliance or fiscal mismanagement. The state support grants of two grantees were placed on interim funding in order to give the Corporation's Board of Directors and the grantees greater flexibility to effectuate a restructuring of the state support funding in those two states in the event that such changes could be agreed upon. The basic field grants of both grantees were annualized. Another grantee was placed on interim funding while the Corporation resolved a long-standing dispute about whether a portion of the recipient's grant should be characterized as "basic field" or

"Native American" funding. The grants of these three grantees were annualized in March 1988, effective April 1, 1988.

As noted, Corporation has restored five programs to annualized funding status. Two programs were restored after issues had been mutually resolved. Three other programs were restored once assurances were made by the programs that corrective action would be taken.

At this time, the Corporation continues regular review of the 13 programs presently on interim funding.

METHOD OF FUNDING STATE SUPPORT CENTERS

Mr. Durant, I have been told that you personally suggested that state support grantees request direct funding from LSC rather than continue as subgrantees of a local program. Three state centers responded to your suggestion by applying for direct funding well over a year ago.

Question. Are you aware that the response of Corporation staff was to short-fund these three programs?

Answer. The state support grants of two recipients were placed on interim funding during 1988 in order to facilitate transition of funding rights in the event that the parties agreed to a modification of the funding structure of state support in the two states. The basic field grants of both recipients were not affected by this action. This action was a temporary measure without any punitive intent or effect.

The state support grant--but not the basic field grant--of the third center in question was placed on interim funding primarily due to LSC's concerns that the activities of the state support subgrantee were not in compliance with the LSC Act, regulations, and other applicable law. Such concerns were raised in a draft monitoring report which had been submitted to the grantee and the subgrantee in 1987. The Corporation was discussing with the grantee possible changes in the state support funding structure. LSC has had extensive discussions with the grantee and subgrantee regarding issues of compliance.

Question. Do you view this action as appropriate given your suggestion that these programs be directly funded?

Answer. Interim funding was considered to be in the best interest of the two grantees because it permitted the parties the flexibility to respond quickly to any final decision to transfer state support funding to a new grantee. After all, for January and February 1988 recipients had short term funding with the extension of 1987 grants. The LSC Board was to address the issue in its March meeting so no prejudice to the programs was expected. After the recipients articulated concerns that the interim funding actions might be construed as being punitive in nature, the Corporation annualized the state support grants of both recipients. However, as mentioned above, the case of the third grantee is distinct, and the issue of funding depends upon the resolution of other concerns.

Question. How does this suggestion comport with the LSC proposal that grantees be given more control over the funding of national and state support?

Answer. LSC's proposal maintains that each individual basic field program should be given more control over the support services it needs. The issues raised in this question arise from the configuration of the FY 1988 budget and do not figure in the FY 1989 budget, which has been designed to advance control by basic field programs over the provision of support services.

BOARD COMPOSITION REGULATION/NATIONAL SUPPORT CENTERS

Question. Your proposed regulation requires that the selection of Boards of the National Support Centers be "performed by a combination of state, county or municipal bar associations whose combined membership represents a majority of attorneys in the nation." According to the ABA, the bar associations meeting this criteria are the bars of California, New York, Illinois, D.C., Florida, Texas, Pennsylvania, and Chicago.

Please provide me with specific examples of abuses which have occurred using the current appointment process employed by National Support Centers where attorney board appointments are made by the state bar association for states in which the centers' offices are located.

Answer. Board member Michael Wallace, Chairman of the Operations and Regulations Committee, has expressed the need to ensure that the boards of directors of national support centers be composed of representatives from a combination of state, county, or municipal bar associations whose combined membership represents a majority of attorneys in the nation. In so doing, national support center boards would be in compliance with the McCollum Amendment requiring bar associations representing a majority of lawyers in the service area to make board member selections.

The Corporation has identified certain areas of concern relating to the appointment practices of some national support centers. In particular, LSC has found that in several instances attorney appointments have been unduly influenced by the centers the appointees were to have governed.

A recent effort to reform and standardize the attorney appointment process was undertaken by the California State Bar Association, in June 1987. Specifically, the California State Bar Association included a policy in its attorney appointment process that prohibits the reappointment of individuals who have already served six years or two terms on a program board. Other appointment procedures adopted by the California Bar require the grantee to provide the following information to the bar prior to appointment of any individual to a program board:

(a) the number of current vacancies;
(b) the minimum requirements the recipient wishes the bar to consider;
(c) a copy of the grantee's bylaws and any proposed revisions to such bylaws;
(d) a profile of the current board including factors such as sex, race, ethnicity, geographic location, and type of practice; and
(e) the board's method of soliciting applications and reviewing the qualifications of applicants.

The revised California State Bar procedures also require that it issue a press release soliciting applications.

In addition, the District of Columbia Bar, which is presently responsible for appointing 28 attorneys to five national support centers, has had occasion to reexamine its appointment process.

The Corporation is encouraged by these revisions and expects more substantial involvement in the future by bar associations in attorney board member appointments for national support centers, as well as local legal services programs.

BOARD COMPOSITION REGULATION/OLD DATA

Question. The appropriations rider on governing bodies was first included in the FY 1983 appropriation. It is my understanding that it was not fully implemented until 1984. Yet, the statistics you and the Corporation relied upon in adopting the new regulation were data from 1986. In other words, it only reflects the first two years of operation under the appropriations rider on governing bodies. Do you believe 1986 statistics accurately reflect whether the current system is working?

Would more recent data show that problems identified after only two years of operation under the restriction on governing bodies have subsequently been addressed?

Answer. At the request of the Chairman of the Operations and Regulations Committee, the Corporation's Office of Monitoring, Audit, and Compliance (MAC) prepared a report regarding the attorney board member appointment process. In an initial report in December 1987, MAC discussed its finding that in certain instances, recipients, rather than the bar associations, control or influence the attorney board member appointment process. The Board tenure statistics for this report were gleaned from 1987 Applications for Refunding.

Thereafter, MAC updated its report by analyzing information provided by grantees' 1988 Applications for Refunding. The 1988 applications, of course, reflect recipients' experience through very late in 1987. Data provided by 323 recipients on over 5,800 board members was compiled with respect to appointing organizations and terms of service. Additionally, monitoring reports, proposed bylaw amendments and other documents relating to board governance were reviewed. The review of this more recent information supported MAC's initial findings based on the 1986 data.

Although compliance concerns remain, programs seem more sensitive to applicable laws and regulations on governing bodies.

BOARD COMPOSITION REGULATION/BOARD MEMBER SERVICE

Question. Your regulation would limit the number of consecutive years a board member may serve to six and require that an individual be absent from the recipient's board for a minimum of one year before being eligible for reappointment.

Can you assure me that this requirement will not eliminate from governing bodies those individuals in the private bar who have the most expertise and have demonstrated a continuing commitment to the provision of quality legal assistance to the needy?

Answer. The Corporation is confident that requiring a board member who has served six years to be absent from the recipient's board for a minimum of one year before being eligible for reappointment will not eliminate from governing bodies those individuals in the private bar who have expertise and a continuing commitment to the provision of quality legal assistance to eligible clients. On the contrary, this recommendation will vastly enlarge the opportunity for service by all committed bar members. Additionally, as LSC Board member Michael Wallace has stated, rotation in office is something that most organizations do voluntarily. For example, the California State Bar Association adopted a policy to limit to six years the tenure of its legal services board appointments. This policy was part of the bar association's effort to reform and standardize the attorney appointment process and it is identical to LSC's proposal for recipient's boards of directors.

According to information provided on recipients' 1988 refunding applications, board member turnover has averaged approximately 15% per year for the past four years. Of current board members, 1,334, or 22% of all board members, have served a total of six or more years, including some who did not serve the six years continuously. Accordingly, only a relatively modest percentage of board members will be affected by this regulation.

Furthermore, recent ABA data suggests that there are a number of qualified bar members available to fill vacancies arising on LSC recipient boards. According to the ABA, approximately 90,000 volunteer attorneys perform pro bono service for indigent persons in their communities. These individuals constitute a considerable reservoir of dedicated attorneys whose status as uncompensated volunteers makes them worthy candidates for recipient board membership.

The long-term effect of this feature of the proposed regulation is promising. If implemented, it will broaden attorney participation in the legal services community, which in turn will assist programs in their continuing efforts to provide high quality, economic and efficient legal services to eligible clients.

BOARD COMPOSITION REGULATION/ OPERATIONS OF BOARDS AND COMMITTEES

Question. Finally, your regulation would make changes in the way board committees operate and in voting procedures for board meetings. Currently, these procedures are governed by state nonprofit corporation law.

Have you identified problems of such overriding importance that they merit establishing a regulation which may conflict with existing state nonprofit corporation statutes?

Why can these issues not be dealt with through existing tools available to LSC such as the approval of bylaws, monitoring, and technical assistance?

Answer. As noted above, the Chairman of the Operations and Regulations Committee requested that the Office of Monitoring, Audit, and Compliance (MAC) prepare a report regarding the attorney board member appointment process. In that report, MAC identified absenteeism problems on the part of both client and attorney board members. In response to this finding, he noted that board members should be present at meetings or at a minimum should be in contact during a board meeting by telephone and "vote their own mind. Nothing is wrong with that as a matter of principle."

Facts gathered through monitoring indicate that most program bylaws provide for removal of members who continually miss meetings. However, these rules are often unenforced. Where bylaws permit voting or the establishment of quorum by proxy, some recipient boards have used these procedures as substitutes for actual attendance.

By not fully participating in board meetings, appointees cannot fulfill their responsibility to contribute to the board's deliberations on general program policies and procedures. Moreover, the delegation of important decisions to the executive committee, generally composed of the board officers, relegates control of program policy to a small segment of the governing body.

Additionally, management and compliance problems can go undetected and uncorrected by boards in which absenteeism or the excessive use of proxies persists. For example, the board of at least one LSC program achieved quorum only twice in the three years prior to its 1986 on-site monitoring. Based upon this review, numerous management difficulties were identified. These difficulties can be traced in part to the program board's failure to participate fully and consistently in general program policies and procedures. As a result of these management difficulties, the program is now implementing a corrective action plan under the direction of the Corporation.

The provisions regarding quorum, voting, and committee authority proposed by LSC in the revised 45 C.F.R. 1607 foster involvement and participation at the local level. Indeed, the provisions are consistent with local and Federal schemes regarding board governance procedures. Moreover, the provisions do not conflict with any state nonprofit corporation statutes of which LSC is aware. State laws ordinarily establish normal thresholds of conduct of business but permit stricter requirements in the discretion of the directors. Although some state nonprofit corporation statutes generally permit the use of proxy voting, and others restrict it to corporations whose articles of incorporation or bylaws specifically authorize such voting, LSC is aware of no state law prohibiting a nonprofit corporation from restricting proxy voting by means of its charter or bylaws. The proxy voting provisions of the proposed regulation, therefore, present no conflicts with any state statute, as any recipient may revise its bylaws to incorporate the restriction, or simply comply with the regulation as a matter of practice.

Similarly, no state nonprofit statutes of which LSC is aware prevent an organization from imposing quorum requirements higher than that imposed by state law. Some state statutes do specify the number or proportion of members required to enter into a particular transaction (such as amendment of bylaws, sale or mortgage of property, or dissolution of the corporation), for which purposes quorum cannot be set at a lesser number. However, there is no prohibition to a nonprofit corporation's articles of incorporation or bylaws setting a higher quorum requirement for specified transactions or for meetings generally is imposed.

Many programs are not familiar with the procedural safeguards LSC attempts to encourage through a review of bylaws, or with standards for governance developed by other bodies, such as the American Bar Association Standing Committee on Legal Aid and Indigent Defendants.

The ABA's Standards for Providers of Civil Legal Services to the Poor states, in its commentary on Standard 7.3, "Practical aspects of governing body operation, such as the time, location frequency, and manner of holding meetings, can influence significantly the effectiveness of the body and of individual members." LSC has observed the accuracy of that comment in the operations of recipient boards, and is attempting to provide clear and sufficient guidelines of governing procedure to assist recipient governing bodies in their effective oversight of the delivery of high quality legal assistance.

NONDEPARTMENTAL WITNESSES

American Bar Association

STATEMENT OF JOHN J. CURTIN, JR., ON BEHALF OF THE AMERICAN BAR ASSOCIATION

ACCESS TO JUSTICE

Senator Rudman. Welcome, Mr. Curtin.

Mr. Curtin. Thank you, Mr. Chairman.

It is nice to be here on this lovely, warm spring Washington day.

Senator Rudman. It is nice to have you here coming down from Boston. You have a statement.

Mr. Curtin. Yes, I do.

Senator Rudman. Your entire statement will be put in the record. I would appreciate it if you would just summarize your testimony, I may have some questions for you.

Mr. Curtin. I would be delighted to do that. I understand your time restraints, and I want to thank you for giving us the time.

As you know, Senator, I am an attorney from Boston, practicing with a law firm there. Why I am here today is that I am the chairman of the Standing Committee on Legal Aid and Indigent Defendants of the American Bar Association.

Senator Rudman. Why don't you identify your law firm, just for the record.

Mr. Curtin. I am always delighted to do that, Senator.

[General laughter.]

Mr. Curtin. I am a partner in a firm called Bingham, Dana and Gould at 100 Federal Street, Boston, MA.

Senator Rudman. It has been there longer than the U.S.S. *Constitution.*

Mr. Curtin. For about 100 years, I think.

Senator, I am here today at the request of our president, Bob MacCrate, to express the views of the American Bar Association on the 1989 fiscal year appropriation for the Legal Services Corporation.

I should start out by thanking Chairman Hollings, yourself as the ranking minority member, and the entire subcommittee for the support which you have given to a strong legal services program, and for your vigilant oversight over the efforts of the Legal Services Corporation and its Board. I think, but for your efforts, the program would be a far less effective vehicle for providing meaningful legal representation and access to justice for the poor. It is access to justice that I would like to talk about this morning.

REASONS FOR JEOPARDY OF LSC

It is the intent in the Legal Services Corporation Act to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances, and I am afraid that that high ideal is in serious jeopardy. Let me talk about some reasons why I think that.

First of all, with respect to the funding, you know that the congressional appropriations highwater mark was at $321 million in fiscal year 1981. At that level, for the only time in the history of the Corporation, there was approached the idea of minimum access funding, which was sufficient to fund two attorneys for every 10,000 poor persons.

I know in New Hampshire, the number of attorneys for the population is a lot higher than that, and it is sure much more than that in Massachusetts, which has even more lawyers. So that was a minimum access, and a minimal approach. We estimated, in that time period, that about 20 percent of the legal needs of the poor were being met.

We have had inflation, and we have had funding reductions since that time. In terms of real dollars, in order to restore the program just back to 1981, you would need a current appropriation of over $500 million. It means that with a current appropriation of $305.5 million, the program is at 60 percent of the level it was back in 1981. So a minimal access program has been reduced by about one third in the past 7 years, before Friday.

PRO BONO ACTIVITY

Some of this gap has been filled by increased pro bono activity, by the use of IOLTA funds, which as we know are available now but with increased technology will not be available forever, and in some States, like Massachusetts, through the wisdom of the State Legislature, by the creation of a mini-Legal Services Corporation in our State, called the Mass Legal Assistance Corporation, which was originally, principally funded and is still principally funded by filing fee sur chages.

Massachusetts has all three of those supplements. Those are the three kinds of supplements that Chairman Durant indicated he expected would increase as we cut down the amount of funding for the Legal Services Corporation.

We have just done a study of the legal needs of the poor in the State of Massachusetts. We are informed that the methodology is very supportable, that it is an outstanding study, and our analysis indicates that only 15 percent of the legal needs of the poor in Massachusetts are being met in a State which has a long tradition of volunteer support, in a State which has all three of the supplemental programs that Chairman Durant expects will fill in the gap.

RESTORATION OF PROGRAM CUTS

Our position, therefore, as the American Bar Association, is to urge you to restore the cuts which the program has had to sustain. Not to go back to $250 million, but to go forward to a level which, consistent with the budget constraints that you have, you can support.

We are pleased that we are at least up to $305.5 million from the original budget cut of $241 million. Our recommendation for this fiscal year is $367.5 million. Let's be very clear, a far larger amount could clearly be effectively used. We think that you, in light of your constraints, are going to have difficulty in raising the $305.5 million amount.

Our recommendation is not to restore it back to 1981, but it is simply to restore it to 1984 and it is merely by adding inflation figures. That is the only addition that we are asking for in the appropriation.

We simply find the recommendation of $250 million to be incomprehensible. I have read Chairman Durant's statement before the House committee. I have heard him today. In all deference, the "emperor has no clothes." There is no rational basis that has been put forward for a cut from $305.5 million to $250 million. The idea that somehow additional funds will be forthcoming if you cut, because there have been additional funds forthcoming in the past, is an idea, but it has no factual basis.

I was there when the cuts were made. I was there when the Greater Boston Legal Services Corporation was cut 35 percent. I was there when we cut the staff. I was there when we cut the services. I was there when we reorganized the entire amount of access to justice by the poor. It was tough. The idea that you are going to cut $55.5 million and somehow, from up on high, it is going to be matched or bettered to me is without any factual basis.

We are not trying to preserve the status quo on that basis, that is going backward. We want you to go forward, and we don't want you to go forward in even a dramatic way. We want you to go forward to recapture what inflation has eroded.

Let me say one other thing. I simply find it the height of irony that the first time this administration supports funding of legal services for the poor in a meaningful way that the result of that is a recommendation that we cut $55 million from the budget. Now there seems to me to be some slight illogic in that.

NATIONAL AND STATE SUPPORT CENTERS

With respect to the other issues that have been discussed here, the national and State support centers, I think everybody is aware that since 1981 there has been an effort to eliminate the Legal Services Corporation by the administration entirely.

In a number of instances, they have sought to defund the national and State support centers. I don't understand the rationale for that. I guess I didn't understand the rationale for that until I heard Mr. Wallace's comments, which is apparently an ideological basis for it, that is, they are lobbyists, and the way to get rid of lobbyists is to eliminate them.

It seems to me that the budget submission statement, a longstanding commitment to guarantee local control of limited LSC funds, is put to the lie by that kind of a statement. It has nothing to do with local control of limited LSC, it is an a priori judgment.

The local programs have made it perfectly clear that they do not want these support centers eliminated. They believe them to be an irreplaceable resource. When we were discussing this at various hearings, the idea was that, well, the local programs could use some money, additional funding money, and they could keep the support centers in place, and then, when you need them, maybe they will be around. There is no guarantee that a support center is going to be around if people have to feed their families.

There is a talk about the fact that they are political think-tanks in the President's message. I think, in this instance, the President just has bad advice. They are not just political think-tanks. The needs of clients are clearly the driving force for the work of support centers. The local program simply would not strongly support them if it had not been proven in this.

What do they do?

The support centers, I would analogize them to my own law firm, they are like the senior partner in a large firm. They are the most experienced, the most knowledgeable lawyers in the field, in particular areas of the law. You heard the testimony about what the starting salaries are, $16,000. In Boston, it is a little bit higher, $19,000. But I can tell from members of my own family, thinking about going into legal aid work, what a difficult choice that is, if you are going to try to raise a family on $19,000 a year in the Boston area.

So you have to have some resource that is experienced, that has judgment, that knows what they are doing in this area, and the support center staff attorneys are among the most experienced. They possess knowledge and expertise in the areas of the law which make them recognized national authority. They are used on a daily basis by local agencies and local attorneys, and they provide timely help.

They provide legal resource materials. For example, the one in Boston is located in the National Consumer Law Center, and they have a 10-volume legal series which is updated every 2 weeks, and that is a resource that is not available commercially. The law publishing companies are not going to make a lot of money by publishing treatises on how to serve the poor.

TRAINING PROGRAMS

They provide training programs. One of the major problems, Senator, is that the Corporation has essentially abandoned serious training, and we are very concerned about that. The training that is done is being done by people involved in the State and local support centers.

We are so concerned in the ABA that we, from our scarce resources, funded with NLADA a series of training programs that can only be done on an interim basis to meet the needs, and we are using the resources of these people in the national and State support centers. Without them, we wouldn't have the trainers, and we need them.

In short, they provide an invaluable role as a critical element of the delivery system, and if you were to design a system from scratch, you would probably think about having somebody with experience and a support basis that could back it up.

Given your time constraints, I don't want to take a lot of time on some of the things that are in my statement, I do want to say just briefly that this elimination of the Migrant Program, I don't understand that. That seems to be a solution in search of a problem. I do not understand why, and certainly there is no principal basis that has been offered for the elimination of the program, and anyone who has done any work with the migrants knows how desperately they need access to justice.

GOVERNING BOARDS

Governing boards: you have raised some questions about where we are in that. There the process is instructive. You heard some number like 567 responses. In all of the time that I have been involved with the legal services programs, I have never had such an overwhelming response, and one of the reasons for that was that the whole idea, which you recited, surfaced in the Federal Register, as I understand it, without any consultation with the local boards, without consultation with the American Bar, without consultation with State and local support centers, who at least could have raised the questions as to the absurdity of some of the proposals.

The idea of the ABA holding, for example, as was originally proposed, a national plebiscite among all the lawyers, without any consideration of the cost of that, or any consideration of on what intelligence basis they would vote, was just off the wall.

That was not surfaced at all before it was published in the Federal Register, and it is a tremendous distraction from the work of this committee, from the work of the Legal Services Corporation, from the work of the ABA Committee, and from the work of all the boards to have to deal with it, and then have it withdrawn.

There are still, however, some things that we are concerned about. There are significant defects.

First of all, the system seems to be working; again, this is a solution in search of a problem.

Second, there is the party affiliation standard. I have been involved in legal services matters for a number of years, I have never even inquired as to the party affililation of anybody who I have ever been working with, and I see absolutely no basis for it. It intrudes a political process into the process of providing access to justice, and it makes no sense at all.

Third, this business of imposing national rules on local programs. Most of these programs are governed by whatever their State non-profit corporations laws are. They deal with such matters as whether you can operate on committees.

You heard earlier that one of the reasons for defunding national and State support centers was to ensure local control. I understand that foolish consistency is a hard problem, but this doesn't seem to be foolish.

There seems to be a rational basis for saying, why should you impose national procedures on essentially local governance when there exists within the State, and strong attorneys general to enforce it, people who look after nonprofit corporations.

Finally, with respect to this National Support Center election process, even as it exists now in the proposed regulations, it is going to be extremely cumbersome. We just calculated that 70 State bars and city bars can elect the majority of members of these boards. Why do it?

You are certainly more able than I to understand behind the McCollum amendment, but if in fact this is mandated by the McCollum amendment, then I would urge you to do something about it, because it doesn't make any sense.

MONITORING ISSUE

Finally, the monitoring issue. The monitoring issue is an issue which is extremely troublesome. Bob MacCrate got tremendous correspondence, through Senator Biden's office, in a recent Delaware situation, but that is a situation which is just one of many situations that have existed for some time.

Back in 1983, we began a process of discussion with the Legal Services Corporation Board of some standards. Accountability is important. The programs have to be accountable. But, also, it is a two-way street. If you are going to hold people accountable to certain standards, you should operate within certain standards yourself. You should be accountable as well.

As far as we know, there is no public basis for understanding what the standards are for monitoring visits. There is an overall pattern of inconsistency. The monitoring team members frequently lack any significant experience or understanding. I see this because we do monitoring with the hat I wear as a Director of the Mass Legal Assistance Corporation, our object, with the programs is to improve them.

The idea of the monitoring is not to be prosecutorial, although, obviously, if you find something terribly wrong, you want to do something about it. It is to work together to make the programs work better. To have reports that are available in a timely fashion that you can grow together.

There is a concentration, from what I have seen, on details to the exclusion of a major question: Are the programs effectively helping the people they are supposed to be helping?

In my own personal experience, I have personal experience in monitoring, I had a breakfast with the monitors, I simply asked questions about what the standards were that they were enforcing or using, and I asked questions about what instructions they were given. Those questions became a submission to this Congress as harassment by bar leaders of members of the monitoring teams. That kind of distortion of the process undermines the credibility of the process.

We have, since 1983, made ourselves available to the Corporation to work on a set of standards. Since it has not seemed to work out, we are, as a committee, under a subcommittee, beginning the process of trying to develop standards for monitoring, not just for the Corporation but we have IOLTA programs and other groups who seem desperately to want that sort of thing.

My written testimony contains some discussion about the problems of immigration, and I omit that here because of time constraints and not because it is not important.

Senator RUDMAN. The entire statement will be in the record.

Mr. CURTIN. In conclusion, let me just say that the American Bar Association, and our committee particularly, is very grateful for the interest and concern that Congress has shown. We don't think that we could be where we are today were it not for your help, and we urge you to take a few steps forward in the funding process.

[The prepared statement of Mr. Curtin follows:]

STATEMENT OF

JOHN J. CURTIN, JR.
on behalf of the

AMERICAN BAR ASSOCIATION

Mr. Chairman and Members of the Subcommittee:

I am John J. Curtin, Jr., an attorney in private practice in Boston, Massachusetts. I am the Chairman of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants. I appear here today at the request of our President, Robert MacCrate, to express the Association's views on the FY1989 appropriation for the Legal Services Corporation.

First, I would like to commend the Chairman, the Ranking Minority Member, and the Subcommittee generally for your vigorous support for a strong legal services program and your vigilant oversight of the implementation efforts of the Legal Services Corporation and its Board. But for your efforts, the program would be a far less effective vehicle for providing meaningful legal representation and access to justice for the nation's poorest citizens.

In 1988 we are celebrating on various dates the 200th anniversary of the ratification of the United States Constitution by the newly-formed states -- for example, Massachusetts on February 6, South Carolina on May 23, and New Hampshire on June 21 -- which, as the ninth and last state necessary for ratification, caused the Constitution to be established.

The U.S. Constitution had its antecedents, of course, in the constitutions of the various states which had been developed in the preceding decade following the Declaration of Independence. Many of them contain very similar language guaranteeing access to courts and to justice. The 1780 Constitution of Massachusetts, for example, provides:

> Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely and without denial; promptly, and without delay; conformably to the law.

This language might well serve as a charter for the Legal Services Corporation. The language captures well the congressional intent in creating and continuing this program -- "to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances..." (Section 1001(1) of the Legal Services Corporation Act).

The high ideals of the program, however, are becoming tarnished and corroded as a variety of factors threaten the program's proud history of achievement. I would like to address several of these today.

1. Funding

As you know, the Corporation's congressional appropriation reached its high-water mark in FY1981 at a level of $321 million. That funding level permitted the Corporation, for the only time in its history, to approach a so-called "minimum access" level of funding -- funding sufficient to provide two attorneys for each 10,000 poor persons. I emphasize the "minimum" in "minimum access" for it is indeed minimal. We estimated in 1981 that only about 20% of the legal needs of the poor were being met at that time.

Since then, funding reductions and inflation have taken a drastic toll on the program. In order for the program to be restored to its 1981 real dollar level, a current appropriation of well over $500 million would be required. That means that, with a current appropriation of $305.5 million, the program's federal funding is less than 60% of its 1981 level. Thus, a spartan program has been reduced by one-third in the past seven years.

The private sector has been able to redouble its efforts in this period and has softened some of the impact of this fiscal erosion. Formal bar-sponsored pro bono programs have grown to the point that they now number about 500 and have more than 100,000 attorneys in their ranks. The "IOLTA" ("Interest on Lawyer Trust Accounts") programs that have been established in 47 states and the District of Columbia now generate annual proceeds of about $40 million, of which an estimated 68% go to supplementing legal services for the poor. Thus, approximately $27 million/year in additional funding for legal services is being generated nationally. (It should be noted, however, that over $14 million, or better than half of that figure, is being generated in one state -- California). Some states have also supplemented federal and private funding by imposing surcharges on the filing fees in state court and devoting the proceeds to legal services delivery efforts.

But together, these collective public and private resources leave us behind where we were in 1981 -- and therefore far short of meeting the unmet legal needs of the nation's poor. My state of Massachusetts, for example, has all of the above-described programs. Last year, an extensive "Study of Legal Needs of the Poor in Massachusetts" was completed. The study included a telephone survey, a mail survey, site visits and public hearings. The study revealed that even with all of the public and private sector resources described above, only 15% of the legal needs of the poor were being met.

While we have been pleased by the Corporation's budget having been returned to the $305.5 million level from its FY 82 level of $241 million, we urge your Subcommittee to begin to restore the cuts which this program has had to sustain. Our recommendation for a funding level for FY1989 is $367.5 million. We think a far larger amount could be utilized effectively; but we are principally concerned that some significant forward movement be made in the Corporation's appropriation. We are well aware of the federal deficit and budget problems and of the very difficult funding decisions which your subcommittee must make; but we hope that you can find a means to provide some greater level of funding for this program, which has been frozen at the $305.5 million level for the last four years. Our recommendation of $367.5 million is based upon restoring the program not to its 1981 level but simply to its 1984 level, when it received its last increase. We reach this figure by adjusting the 1984 level for inflation during the intervening years. We find incomprehensible the action of the Corporation's Board last week reducing its budget request from $305.5 million to $250 million.

2. National and state support

Since 1981, the Administration has sought to eliminate the Legal Services Corporation. Only in its final budget submission to Congress this year has it relented to the extent of not calling for total defunding of the program. Instead, it has recommended elimination of one of the most effective and cost-efficient components of the program -- the national and state support centers. This recommendation is found as well in the Budget Request submitted by the Corporation's own Board.

The Corporation's budget submission gives its rationale for eliminating the support centers as being "a longstanding commitment to guarantee local control of limited LSC funds." It is manifest, however, that the local programs do not want the support centers eliminated, believing them to be an irreplaceable resource upon which to draw in meeting local needs. A 1983 survey by the Corporation for example, found that 86% of directors of field programs favored continued direct funding of national support centers rather than increased funding of their own programs.

If the local programs, which arguably would benefit from a redistribution of support center funds to them, do not view this proposal as productive, what rationale is there for eliminating the support centers? The Legislative Appendix accompanying President Reagan's State of the Union message to Congress described the support centers as "political think tanks" which have "concentrated on social 'law reform,' without regard to a particular client's needs." In fact the needs of the clients are clearly the driving force for the work of the support centers. The local programs would not call upon them for assistance in cases, and would not be so strongly supportive of their continued existence, were the support centers not providing valuable, indeed essential, assistance to their clients.

The support centers are like the senior partners in a large law firm -- the attorneys most experienced and knowledgeable in particular areas of the law. Support center staff attorneys tend to be among the most experienced legal services attorneys in the country and generally possess knowledge and expertise in their areas of the law which makes them recognized national authorities. These support center resources are not only available -- they are being used on a daily base, providing timely help to legal services clients at the local level.

The centers also produce legal research materials and publications of very high quality -- the National Consumer Law Center's ten-volume legal practice series, for example, which is updated on a biweekly basis. These publication services, focusing on areas of the law primarily affecting poverty-level clients, do not have counterparts in the commercial law book publishing field.

In addition, the centers provide training programs for field attorneys, pro bono attorneys and paralegals. This activity has been critical in recent years as the Corporation has eliminated its own training budget. Field programs have very limited training options, except for those provided by the support centers; again in this area there has been a dearth of commercial training programs in the relevant areas of the law. The Corporation's abandonment of training activity has caused our Association and the National Legal Aid and Defender Association to step in to try to meet needs on an interim basis but will not be able to continue to do so indefinitely.

In short, the centers perform an invaluable role as a critical element in the delivery system. It might appear to be hyperbole to say the centers are irreplaceable; but if one were to sit down and design the most useful resource service that could be provided for local legal services programs, the result would closely resemble the state and national support center system.

3. Migrant programs

The Corporation's Budget Request also recommends the elimination of all funding for migrant programs. The obvious question is why. The Budget Request contains not a single word of justification for this proposal. We see no justification for this drastic move and urge that it not be authorized. Few segments of our population face as many difficulties as the migrant worker population. Lacking permanent homes and community support, performing back-breaking labor at minimal pay, their living conditions depending almost exclusively on the largesse of the growers for whom they labor, they are one of the poorest and most vulnerable groups in our society. Their transience and the unique nature of their employment require that a specialized delivery system be provided to meet their needs. The migrant programs are ably providing that system. It would be a very grave mistake to terminate these programs.

4. Governing boards

The Corporation's Board of Directors has approved regulations which would, if made effective, make significant changes in the selection process for members of the governing boards of local legal services programs and in their operations. The approved regulations are a considerable improvement over the earlier drafts but still have significant defects and should not be implemented in their present form.

First, they do not address any readily-apparent problem. Bar association participation in the governing board selection process is operating smoothly around the country, and the diversity of ways in which program boards operate reflects local preferences.

Second, we are very troubled by the party affiliation standard. We see no justification for, and serious danger in, the intrusion of partisan political factors into the selection process. Nowhere is there evidence that boards have been improperly organized to exclude members of any political persuasion. The imposition of political party considerations would politicize program boards without apparent benefits to governance or the delivery of legal services.

Third, we do not think nationwide rules should be placed on essentially internal governance procedures of local programs, absent a strong showing of need to do so. We would place both the six-year limitation on tenure of board service and the restrictions on the authority of board committees in this category. State non-profit corporation laws provide sufficient guidance on these subjects.

Finally, with respect to the selection of the lawyer members of national support center boards, we believe the proposal to utilize a combination of bars in making appointments would be terribly cumbersome and difficult to implement.

While we applaud a goal of ensuring diversity and geographic balance on support center boards, having a few large bar associations make appointments is unlikely to further this aim. This is what might occur if one or more support centers were able to obtain the participation of several large bar associations. For example, the memberships of only eight associations, the California, New York, Illinois, District of Columbia, Florida, Texas, Pennsylvania, and Chicago Bar Associations, total 366,000 lawyers, slightly more than half the 715,000 attorneys licensed as of Fall, 1987. This nominating consortium would exclude whole regions of the country from the process. An equally disturbing limitation in the regulations would preclude the staff of local programs from serving on the support center boards. This would deny to these boards the benefit of the expertise of some of the people most knowledgeable about legal services in the country.

Alternatives can be found to better serve the goal of wider participation. We have offered to the Corporation to consult with bar associations currently making appointments to develop such alternatives. One possible approach is the establishment of an appointment committee composed of representatives of the ABA, other national organizations such as the National Bar Association, the Women Lawyers Association, the Hispanic Bar Association and the National Legal Aid and Defender Association, and some state and local bar associations on a rotating basis. If the Corporation is willing to fund the expenses of a more broad-based selection process such as this suggestion, we are willing to try to develop an effective approach.

5. Monitoring

In your Committee Report on FY88 appropriations, a number of concerns were expressed about the Corporation's monitoring procedures. In particular, you noted that monitoring reports needed to be prepared more promptly, site visits were to be conducted only upon reasonable notice to the local program, requests for production of documents should be reasonable and pertinent, and consistent standards and procedures should be used for all grantees and contractors.

The situation remains one of concern to the organized bar. We have the sense that improvements are being made in some areas and in some visits. We also are aware, however, that serious problems continue to occur in other monitoring visits. Notice to programs has improved, and, while the issue has not been resolved with the finality we would like, the question of ensuring the confidentiality of client-identifiable information appears headed in the right direction.

But we continue to be distressed by other problems. Monitoring team members frequently lack any significant experience or understanding with respect to legal services delivery. Visits frequently appear to be prosecutorial in tone rather than objective fact-finding and review. There is little or no indication that monitoring is intended to improve performance. There is a concentration on details of program administration but little attention paid to the adequacy of client representation. Reports still tend to be quite delayed and program comments in response to drafts frequently ignored.

The overall pattern, to the extent there is one, is inconsistency. This inconsistency reinforces the importance of the establishment of uniform, sound standards and procedures for the monitoring visits. We initiated discussions in 1983 with the Corporation offering to work with the Corporation to develop appropriate standards. We have recently renewed that offer.

There is a need for accountability on two levels -- the programs and the monitors. The Corporation appears unwilling to accept public, objective criteria against which their monitoring visits may be measured.

6. Alien restrictions

Current appropriations riders provide that certain classes of aliens in this country should not be eligible for legal services. The motivation for this restriction apparently is a sentiment that those not legally in this country should not be eligible for benefits; a number of categories of aliens who have been accorded some form of legalized status by our government is permitted to receive legal services as exceptions to the general policy.

In 1986, Congress passed the Immigration Reform and Control Act ("IRCA"). One of the principal provisions of that Act was the establishment of a process by which undocumented aliens in this country could apply for a legalized status -- first as temporary residents, then as temporary residents and ultimately as citizens.

In passing the IRCA and its legalization provisions, Congress recognized that millions of aliens have lived in this country for at least five years, but have been relegated to a fearful subclass unprotected by many of our laws and unable to enforce those limited rights which they possess. IRCA's legalization provisions were enacted to provide an equitable solution for this population by conferring legal status, which in our country necessarily entails a wide range of substantive rights. Experience, however, has taught us that to grant these rights to newly legalized immigrants while simultaneously denying them the ability and opportunity to legally enforce them, prevents them from becoming participating and equal members of our society, and would render those rights meaningless.

The very purpose of the Legal Services Corporation is, or course, to secure the promise of equal justice under law to those in our society who are most disadvantaged by providing low income individuals with legal counsel. In fact, thirty to forty percent of the newly legalized population is estimated to fall within the financial guidelines of the Legal Services program.

As I have summarized above, two impediments exist to the provision of legal assistance to these legalized residents by LSC grantees. First, the Immigration and Naturalization Service, in proposed regulations published last year, has interpreted IRCA in a way which would prohibit any such representation for five years. IRCA disqualifies newly legalized aliens from receiving "financial assistance furnished under federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need" for which individuals would be ineligible for five years following the grant of temporary resident status. Section 245A(h)(A)(i). The proposed interpretation of this provision in the regulations is impermissibly broad and encompasses many services only partially financed with federal funding, including legal services.

Congress in IRCA intended to provide a humane and generous legalization program and resolved "that the Attorney General shall take due and deliberate actions necessary to safeguard the Constitutional rights, personal safety and human dignity of United States citizens and aliens." However, the proposed regulations would disqualify legalized individuals from a much broader array of programs than Congress had intended, including some programs for which they are currently eligible. In particular, we view the disqualification from services provided through the Legal Services Corporation to be contrary to the plain meaning of the statute and the stated intentions of Congress, and deleterious to accomplishing the basic purposes of IRCA as set out by Congress.

It is worth noting that the Legal Services program is not a program of federal "financial assistance" furnished by the federal government directly, or indirectly, to eligible individuals. The

LSC is, of course, a non-profit corporation which, although funded by Congress, "shall not be considered a department, agency, or instrumentality of the Federal Government." Section 1005(e)(1). The Corporation does not provide legal assistance directly to clients but makes grants to a range of providers, the majority of which are non-profit staff attorney programs. These recipients then make the final decisions regarding whom to serve and provide the direct legal assistance.

The provision of legal services through this structure simply does not constitute, in our view, the kind of financial aid envisioned by Congress in its use of the term "program of financial assistance." Legal counsel provided with LSC funds has never been considered to be "public welfare" or "financial assistance" by any government entity and was not suggested by any member of Congress to be appropriate for inclusion on a list of prescribed programs. LSC services also are not taxable and are not deemed to be "income" or "resources" under any regulatory scheme. Moreover, not even existing INS regulations consider the acceptance of such services to be public benefits which would endanger an alien's immigration status by rendering him or her a "public charge" under the immigration law.

The error of identifying the Corporation as a program of financial aid under Section 245A(h)(1) is further demonstrated by comparing it to the nine federal programs which Congress specifically deemed "shall not be construed to be financial assistance" under Section 245A(h)(4). Like the majority of those exempted programs, LSC is a service-oriented program. As acknowledged by the INS in its January 13, 1987, Preliminary Working Draft Regulations for the implementation of IRCA,

> the legislative history of the IRCA suggests that Congress did not envision that Federally funded service-oriented programs

would be included in the general definition of financial assistance programs. This view is buttressed by the list of programs expressly excluded by the statute as Federal financial assistance programs under section 245(h)(4).

The second problem is that the alien rider on the LSC appropriation excludes all aliens who are not specifically listed. While some of the newly legalized aliens (e.g., those who have a U.S. citizen spouse or child) would, absent an IRCA regulation restriction, qualify under one of the existing four categories of eligible aliens specified in the rider, many would be excluded.

We believe Congress has demonstrated the intent to exclude from eligibility for legal services only those who have not been granted a legal status in this country. We would hope that this Subcommittee -- which, of course, has within its jurisdiction the Immigration and Naturalization Service, as well as the LSC -- would provide that those who have achieved temporary resident status under IRCA not be barred from receiving legal advice and representation from LSC grantees.

In conclusion, let me reiterate our appreciation to this Subcommittee for the concern and support it has demonstrated repeatedly for this program and our hope that the program can be expanded and strengthened.

Senator RUDMAN. Mr. Curtin, thank you very much for your testimony. It is very helpful. We, of course, have great respect for you and the organization you represent.

Mr. CURTIN. Thank you.

Senator RUDMAN. I see Senator Sasser has joined us.

If you have questions, the other people are still here if you would like to ask those questions.

Senator SASSER. No, Senator Rudman. I just wanted to get here for a few moments to hear the last portion of Mr. Curtin's statement and by my presence here indicate my support for his point of view, quite frankly.

Mr. CURTIN. Thank you very much, Senator. I appreciate that.

Senator RUDMAN. We are all done.

SUBCOMMITTEE RECESS

Senator SASSER. This concludes our hearing for today. The subcommittee will stand in recess until Wednesday, April 20, 1988, when we will meet with the man of the hour, the Attorney General of the United States, General Meese, along with representatives of the FBI, DEA, Marshals Service, INS, and the Border Patrol, to discuss drug enforcement coordination. It will be a very busy day.

[Whereupon, at 11:35 a.m., Wednesday, March 30, the subcommittee was recessed, to reconvene Wednesday, April 20, 1988.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1989

WEDNESDAY, APRIL 20, 1988

U.S. Senate,
Subcommittee of the Committee on Appropriations,
Washington, DC.

The subcommittee met at 10:35 a.m., in room SD–138, Dirksen Senate Office Building, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Bumpers, Chiles, Lautenberg, Sasser, Rudman, and Weicker.

DEPARTMENT OF JUSTICE

Attorney General

STATEMENT OF THE HONORABLE EDWIN MEESE, III, U.S. ATTORNEY GENERAL

INTRODUCTION OF WITNESSES

Senator Hollings. This morning we continue our topical hearings on programs under the jurisdiction of the Commerce, Justice, State, and the Judiciary Appropriations Subcommittee.

To testify on behalf of the Department of Justice is Attorney General Edwin Meese, FBI Director William S. Sessions, DEA Administrator John C. Lawn, INS Commissioner Alan C. Nelson, U.S. Marshals Service Director Stanley E. Morris, Bureau of Prisons Director J. Michael Quinlan, as well as Harry Flickinger, the Assistant Attorney General for Administration.

DRUG ENFORCEMENT COORDINATION

The focus today is on drug enforcement coordination efforts within the Department of Justice. Citing increased funding for drug enforcement and prison construction, the President's request is $6,155 billion, representing a 14 percent increase over the fiscal year 1988 appropriated level.

While the hearing will focus on drug enforcement coordination, it will be the subcommittee's only opportunity to review the Department of Justice's budget request for fiscal year 1989, therefore, questions on other aspects of the Department's budget are also expected.

It is my pleasure to welcome the Attorney General this morning. General Meese, as you know, we have received your statement. It will be included in its entirety in the record, and you can highlight it as you wish.

SUMMARIZATION OF OPENING STATEMENT

Mr. MEESE. Thank you, Mr. Chairman.

I appreciate the full statement being included in the record, and I appreciate this opportunity to discuss with you and the committee our fiscal year 1989 request, as well as the Department's on-going programs and policies as they relate to the budget.

In response to your request that our discussion today concentrate on drug enforcement and law enforcement coordination, I have particularly summarized my remarks in that direction, but obviously, as you point out, we will be happy to answer questions on other matters that may come to the attention of the committee members.

CRIMINAL JUSTICE SYSTEM

While there are many aspects to the responsibilities that we have to fulfill, most of these aspects are closely related. If we are to apprehend and convict criminals, we must improve our intelligence gathering activities and be ready to protect those who are willing to assist us. If we are successful in apprehension and conviction, we must be ready to house and manage the convicts during the time of their punishment for the crimes.

If we ignore one area of crime, its proceeds will be used to finance other crimes. Thus it is clear that all our activities must be coordinated and this is particularly true in allocating resources. The budget that I am presenting today represents the necessary careful balancing of resources.

Our budget builds on the previous accomplishments of the administration, and takes account of those changes and trends that continually affect both the nature of the problems with which we deal, and the efficacy of our methods. Having said that, let me turn first to drug enforcement and law enforcement coordination.

DRUG ENFORCEMENT AND LAW ENFORCEMENT COORDINATION

Early in this Administration we established that, contrary to previous myths, there was a definite connection between drug trafficking and organized crime. As a result, we launched a series of multi-agency task forces on a regional basis to deal with this problem which were composed of a broad spectrum of Federal, State and local criminal justice agencies.

ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES

Our 13 Organized Crime and Drug Enforcement Task Forces have full participation from all of the Federal agencies that were originally contemplated. Our convictions and our prosecution successes over the several years that these task forces have been operating have been well beyond our initial expectations. These task forces are now reflected in the budgets of the various participating components.

COMPREHENSIVE CRIME CONTROL ACT

As you know, new legislation has been passed to aid the efforts of the Federal Government. The Comprehensive Crime Control Act of 1984 particularly addressed the needs of law enforcement and has been a valuable part of both our coordination as well as our efforts against drug trafficking, particularly the improved criminal forfeiture procedures establishing the Assets Forfeiture Fund, which we believe is one of the most effective new tools that we have against the drug criminal.

NATIONAL DRUG POLICY BOARD

This law also led ultimately to the establishment of the National Drug Policy Board, which I Chair, to facilitate the coordination of Federal efforts designed to fight drug trafficking and drug abuse. It also was very important to improve our ability to fight crime while at the same time being careful not to infringe upon civil liberties.

ANTI-DRUG ABUSE ACT

Another major piece of legislation that we have been implementing during the past year-and-a-half has been the Anti-Drug Abuse Act of 1986. It took the introduction of crack cocaine and some rather prominent deaths in this country to make the Nation realize that the Drug War, as it is called, had entered a new phase, and this legislation provided additional tools that were very important in dealing with the problem.

DRUG RELATED CRIME

Recently, I had the opportunity to announce the results of a study that was conducted by one of our Department's components, the National Institute of Justice. This study involved over 2,000 prisoners in 12 cities who had been arrested on serious criminal charges other than drug related activities. These prisoners agreed to take a urine test which would identify the presence of any one or more of ten drugs. Depending on the city, between 53 and 79 percent tested positive in terms of having illegal drugs in their systems.

Unfortunately, the use of drugs by criminals appears to be rising, and almost two-thirds of the criminal cases involving judicial proceedings are for narcotics violations.

DECLINE IN DRUG USE BY HIGH SCHOOL "SENIORS"

There is, however, more encouraging news that has come from the National Institute of Drug Abuse. For the first time since the Institute began its annual survey of high school seniors in the early 1970s, cocaine use among this group has dropped by one-third. Ninety-seven percent of those students polled in 1987 disapproved of regular cocaine use and 87 percent disapproved of even trying it experimentally. Marijuana use was the lowest since the survey began, some 10 years before. There are a lot of other drugs that are being abused, but we are somewhat encouraged that abuse by the general population does not seem to be growing.

CONGRESSIONAL AND ADMINISTRATION ANTI-DRUG EFFORTS

I will have more to say later about what our agencies are doing about drug abuse when we discuss their individual budgets, but I did want to indicate to the committee that the legislation that Congress has enacted and the President's program for a long-term effort for a drug free America gives us some reason to believe that we are making progress.

To continue that progress, we must further strengthen our efforts to enforce the law and to discourage the demand for drugs, and that is the basis for the budget that I am presenting today.

ANTI-DRUG BUDGET REQUEST

As I am sure the committee is, we are often asked what is the best investment of resources in order to disrupt the drug trafficking establishment. In 1989, we are requesting a total direct funding anti-drug budget of $1.5 billion, $206 million over our 1988 appropriation.

This investment represents an increase of 311 percent in funding since 1981. Over the years, we have invested our resources in the areas which have been proven to be most effective, and we plan to continue this strategy in fiscal year 1989.

The Organized Crime and Drug Enforcement Task Forces, State and local task forces, the asset forfeiture equitable sharing program, and enhanced laboratory services are highly successful and a proven method of combatting the war against drugs. We have introduced and initiated such notable programs as Operation Alliance along our Southwest border, and the National Narcotic Border Interdiction System.

COOPERATION WITH STATE AND LOCAL AGENCIES

The significance of these programs, like the Organized Crime and Law Enforcement Task Forces, is that the emphasis is upon the coordination and the comprehensive approach taken by the Federal agencies working together with our State and local counterparts.

Our successes have been the result of the policies and strategies developed by the National Drug Policy Board and of the strategic plans that are being implemented at the present time. We have experienced the most significant buildup of resources committed to the so-called war on drugs during any one presidency.

BUDGET REQUEST

Our 1989 overall budget request seeks $5.6 billion in direct appropriations to support some 75,100 positions. This continues the basic objectives that were contained in our budget request for fiscal year 1988 and we continue to make efforts to utilize these funds in the most effective manner.

In law enforcement, our major priorities and our intention is to devote a major portion of these resources to the fight against drug trafficking as well as to provide prison facilities for those who are convicted.

To augment the drug enforcement efforts and to ensure the prosecution of those who are involved in this type of drug trafficking activity, our request addresses the personnel requirements of the DEA, the FBI, the U.S. Attorneys, and our very much burdened Bureau of Prisons.

JUDICIAL SECURITY AND PRISONER TRANSPORTATION

I might point out particularly that the resources requested for the Marshals Service address the very major need for security in the courts and for the housing and transportation of unsentenced prisoners who are in custody.

To accomplish these objectives we need not only to maintain the sufficiency of our personnel resources, but also to equip our workforce with the tools necessary to carry out their activities.

We must always bear in mind that deferring capital investment can be hazardous not only to the effectiveness of our war against crime, but also to the physical security of those who work in law enforcement occupations. I mention this particularly in the context of the prison situation.

DRUG ENFORCEMENT ADMINISTRATION REQUEST

In terms of the Drug Enforcement Administration, which is, of course, at the core of our drug program, in 1989, we are asking for $538 million and 5,887 positions. Recent events have demonstrated the importance of our resolve to battle drug traffickers wherever we find them.

The murder of the Colombian Attorney General, the pervasive corruption of the police force of a major American city, and the almost daily drug related murders in our Nation's capital are all reminders of the horrible price that drug trafficking exacts.

In our own Department, we suffered the recent murder of DEA Special Agents Paul Seema and George Montoya and the wounding of Jose Martinez in Pasadena, CA. This reminds us that this is a deadly business not only abroad, where many deaths have occurred during the past year, but also within the community of drug dealers and users, as well as being a life threatening situation to our dedicated police officers and agents here at home.

Our priorities in the Drug Enforcement Administration are to modernize and expand the DEA's air wing to improve the surveillance of domestic drug operations, as well as to help foreign governments suppress the growth and export of illegal drugs.

In addition, because intelligence is so important to our anti-drug efforts, we intend to expand and improve DEA's intelligence and information systems, including the enhancement of the El Paso Intelligence Center, which is increasingly becoming a center for international intelligence sharing.

Finally, we need additional positions to deal with the increasing flow of seized assets by establishing more Asset Removal Teams, increasing the return on the seized assets, and providing better overall support for our increased agent staffing.

FBI REQUEST

In the FBI, in addition to its many other responsibilities, including foreign counter-intelligence, there has been an intensification of our Federal drug efforts, particularly in regard to major traffickers through the national drug strategy of that agency.

The additional resources we are seeking will provide increased data entry and analysis for the organized crime information system, additional intelligence research specialists, investigative assistance for records checks, and also additional pilots for surveillance.

We are also seeking resources for the FBI's-automated identification system to improve productivity and to provide more timely and accurate fingerprint identification services to Federal, State and local criminal justice agencies.

LITIGATION NEEDS

May I turn, Mr. Chairman, then, to our litigation needs, because once the FBI, the DEA, and the other Federal investigative agencies, both in the Department of Justice and in the other Departments of the Executive Branch, develop their cases, they, then, of course, are turned over to the U.S. Attorneys or one of our litigating divisions for further prosecution and disposition.

In order to deal with the drug problem, our U.S. Attorneys will require 309 positions and $12.9 million to expand the prosecution of significant cases and to emphasize criminal proceedings related to asset seizure. It is very important that we provide adequate attorney resources so that the increased arrests resulting from our investigative units can be promptly disposed of in court.

We are also seeking positions and a small budget for the Assets Forfeiture Office of the Criminal Division, which coordinates this important activity.

U.S. MARSHALS SERVICE REQUEST

In terms of the Marshals Service, a very necessary link in the system, we need the additional funds, as I mentioned earlier, for courtroom security, protection of witnesses, and execution of court orders, and the custody and transportation of unsentenced prisoners.

We are asking for additional resources here not only for the personnel needed to handle this situation, but also to obtain more guaranteed jail space for the unsentenced Federal prisoners that are located in State and local facilities while they are awaiting trial or awaiting sentencing.

ASSET FORFEITURE FUND

The Asset Forfeiture Fund is also coordinated by the Marshals Service. While the fund is to spend $200 million in 1989, it is actually, more than self-financing. Our best estimates are that in fiscal year 1987 the seizure and liquidation of criminals' assets cost the Department $69.6 million, but we realized during that year $177.6 million, a return on investment of some 150 percent.

I would suggest to you that even that figure is probably low, since the realization, in many instances, was on assets that were seized earlier when the investment was lower.

I could go on, but let me just say that a particular feature of our asset forfeiture program is the equitable sharing with local law enforcement. In 1987, we distributed $64 million in cash and property. In 1988, we anticipate disbursing $81 million. We believe that in 1989 this should grow to $112 million. I can assure the committee that the appreciation of State and local law enforcement for this sharing has been considerable.

FEDERAL PRISON SYSTEM REQUEST

If I may turn, before concluding, to the Federal Prison System. I think there is no question but that we have a most serious problem which the Congress has been very helpful to remedy in past sessions. I hope we can continue on a sustained basis because the problem continues to be with us despite the fact that it has been materially alleviated by past action of the Senate and the House.

This is why we are requesting $436 million for the Buildings and Facilities appropriation for the Federal Prison System. The operation costs for the system will be $934 million in 1989. This includes an increase of 1,296 positions and $215 million that is attributed directly to the drug enforcement effort. The administration has submitted two amendments that further increase these amounts.

PRISON OVERCROWDING

I think the committee is aware that as a result of the commitment of this administration to the detection, investigation and prosecution of serious crime, the population of the Federal prison system has increased some 85 percent since 1981.

Today, we have 44,000 prisoners in a set of facilities that were originally rated to house much less. In 1981, we had an overcrowding rate of 2.6 percent. Today, our overcrowding is 60 percent, or 160 percent of rated capacity.

The continued implementation of the Comprehensive Crime Control Act of 1984, the Anti-Drug Abuse Act of 1986, and the new sentencing guidelines that were implemented in November will continue to provide for an increase in the Federal prison population, which we estimate will be at least 72,000, and that is a very conservative figure, for 1995.

I think there is no question that the public is safer because of this increased use of our prison spaces, yet we have to be sure that we don't protect the public at the expense of those who have to work in the prisons because of the over-crowding.

Looking back on the years of the Reagan administration, I think we can take pride that the administration, with the cooperation of the Congress, had the vision to recognize how the criminal justice system could be improved. We thank the Congress for helping that system by passing the important legislation that I mentioned.

We all recognize that the Federal deficit necessitated limitations, but I am not hesitant to say that we did the best we could, and I strongly believe that the 1989 budget gives proper emphasis to our most vital needs and our top priorities.

I thank the committee for this opportunity to present the views of the Department of Justice, and I would be pleased to answer any questions you might have.

[The prepared statement of Mr. Meese follows:]

DEPARTMENT OF JUSTICE

STATEMENT OF THE ATTORNEY GENERAL
EDWIN MEESE III

Mr. Chairman and Members of the Committee:

Thank you for giving me the opportunity to discuss with you our FY 1989 request and the Department's ongoing programs and policies.

Because this will be my last opportunity to appear before the Committee in support of an annual budget on behalf of this Administration, I would like to take a few minutes to look back at what the Department of Justice has done during President Reagan's Administratiorn and what can be learned from it.

These have been years of accomplishment. We have moved forward on many fronts to make America a safer place to live. And the sense of accomplishment is enhanced by our sense of responsibility. In his legislative message for this year, the President structured his programs, as the government itself is structured, around the six basic purposes of the Preamble to the Constitution. We at the Department of Justice are proud to take the lead role in two of those six -- establishing justice and insuring domestic tranquility.

One of the things that we believed in coming to these tasks -- and one that has been borne out by experience -- is that while there are many aspects to the responsibility that we have to fulfill, these aspects are all related. If we are to apprehend and convict criminals, we must improve our intelligence gathering activities and be ready to protect those who are willing to assist us in that. If we are successful in apprehension and conviction, we must be ready to house and manage the convicts during the time of the punishment for their crimes. If we ignore one area of crime, its proceeds will be used to finance other areas of crime. All of our activity must be coordinated; and this is especially true in the process of allocating our resources.

Failure to recognize this has, as I have mentioned on other occasions, hampered us from time to time in recent years through what I might call "front-end loading" -- putting plenty of money "up front" for investigating crimes, but too little money farther "down the pipeline." The system becomes unbalanced if we do not have enough money to prosecute when cases come to court or to incarcerate when convictions are obtained.

The budget that I am presenting today represents the necessary careful balancing of resources. It has been carefully calibrated to provide each of the Department's critical functions -- crime prevention, law enforcement, prosecution and civil litigation and incarceration -- with the absolute minimum needed to fulfill the Department's mission responsibly.

Over the past four years, we have carefully developed a set of policy and program objectives based on the requirements of law, the objectives of the President, the responsibilities of the Department and the needs of the public health and safety. These objectives -- including the prevention and control of crime, the improvement of the criminal justice system, the protection of national security, the protection of civil rights, the promotion of sustained economic growth, the improvement of the legal system, the defense of the financial integrity of the government and the preservation of constitutional values -- form the basis of our coordinated plans for FY 1989, each part of which is integrally related to the rest. Our budget builds on the previous accomplishments of the Administration and takes account of those trends and changes that continually affect both the nature of the problems with which we deal and the efficacy of our methods.

Early Administration Accomplishments

One of the earliest priorities of this Administration was to find some method for dealing with the increasing incidence of violent crime. When the Administration took office, crime rates were soaring. With good reason, the public felt unsafe in the streets, in their workplaces, and even in their homes and their schools. Just a few months after President Reagan was inaugurated, my predecessor, William French Smith, appointed his Task Force on Violent Crime, co-chaired by former Attorney General Griffin Bell and Governor James Thompson of Illinois. On August 17, 1981, the Task Force submitted its recommendations.

Though violent crime can strike anyone, the Task Force recognized that it most frequently affects the poor, the young, the very old, and residents in inner cities -- precisely those people who are least able to protect themselves. The Task Force on Violent Crime's 64 recommendations provided valuable insight into the nature and depth of the problem of violent crime -- and a solid base for planning means to combat it. Progress has been made, and the Congress can be justly proud of its role in dealing not only with violent crime but with fraud and other crimes that erode the fabric of society.

Organized Crime and Drugs

But, of course, the problem of violent crime -- like all of the issues that we deal with at the Department of Justice -- is not isolated. It is fueled by many factors and increasingly by drugs, both their use and their trafficking. We have sought to understand the nature of the drug problem, to help the public to understand it, and to work with the public to eliminate drugs and to punish those responsible for the ravages of drugs on our society. That effort -- again, like all our efforts in law enforcement and our other areas of responsibility -- has many aspects.

Early in this Administration we buried an old myth that traditional organized crime was not involved in drug trafficking to any significant degree. On October 14, 1982, the President unveiled an extensive eight-point program to attack drug trafficking and organized crime. At the heart of this initiative was the Organized Crime Drug Enforcement Program, which included a network of regionally based, multi-agency Task Forces comprised of a broad spectrum of Federal, State, and local criminal justice agencies. We reorganized the Drug Enforcement Administration and for the first time applied the massive resources of the Federal Bureau of Investigation -- as well as its 20 years of experience in fighting organized crime -- in the war against drugs.

Our 13 Organized Crime Drug Enforcement Task Forces have full participation from all of the Federal agencies originally committed to the program. Our conviction and prosecution successes are better than we had ever hoped to achieve. These Task Forces are now reflected in the budget through the budgets of the various participating components.

Law Enforcement Coordinating Committees

Again, recognizing that the problems of crime and its impact on the public health and safety are related but are not simply one, discrete, national problem, a recommendation of the Attorney General's Task Force on Violent Crime that was particularly important to Attorney General Smith was the establishment of law enforcement coordinating committees. He and others believed that jurisdictional divisions should not be allowed to impede criminal investigations and prosecutions. Frequently, many investigators and prosecutors were reluctant to open channels of communication; and in many areas of the country no formal arrangements existed for Federal, State, and local law enforcement cooperation. In 1983, the Attorney General set up a Law Enforcement Coordinating Committee (LECC) in each judicial district to assess the differing crime problems and to act on them. Despite local variations, every LECC except one identified drugs as the chief crime problem in its district. Congress provided most of the funding to support these LECC efforts and today they continue to work as one of the cornerstones of inter-governmental law enforcement cooperation. I have highlighted our early work that established the Organized Crime Drug Enforcement Program and the LECCs because I am proud of what this Administration has accomplished in the war on drugs.

Legislation

Of course, law enforcement cannot be allowed to become stagnant. Criminals have strong incentives to subvert both justice and the domestic tranquility, and are constantly looking for new technologies and new methods to help them. We -- and that includes you -- have to be vigilant and creative in finding new ways to thwart them. The legislative record during the Reagan Administration is a strong contribution to this effort.

In 1984, Congress enacted the Comprehensive Crime Control Act of 1984, a key to continued progress in the fight against crime. In 1986 came the Anti-Drug Abuse Act; the Bankruptcy Judges, United States Trustees, and the Family Farmer Bankruptcy Act; and the Immigration Reform and Control Act, all in quick succession. These Acts, on the whole, were significant milestones of which we, the Congress and the American people can be proud.

Comprehensive Crime Control Act of 1984

The Comprehensive Crime Control Act of 1984 addressed our agenda in many affirmative ways. It provided essential bail and sentencing reforms, significantly improved criminal forfeiture procedures, established the Assets Forfeiture Fund to use the criminals' assets to fight crime, amended the insanity defense, strengthened controlled-substance penalties, streamlined justice-assistance legislation, established a missing children's program, eased the transfer of federal surplus property for prison use, provided new labor racketeering amendments, reformed the Foreign Transactions Reporting Act, allowed certain juveniles to be prosecuted as adults, established a victims' compensation fund, and provided a variety of miscellaneous amendments dealing with both violent and non-violent crime. It also enabled us to establish the National Drug Policy Board, which I chair, to facilitate coordination of federal efforts designed to fight drug trafficking and the demand for drugs. This legislation -- dealing with law enforcement issues, as it should, in a coordinated way -- has strengthened our ability to fight crime without infringing on civil liberties. We are grateful to the Congress for enacting the Comprehensive Crime Control Act and look forward to favorable action by the Congress on the remaining items on our crime control agenda.

The Anti-Drug Abuse Act of 1986

The introduction of "crack" cocaine and the subsequent death of two major athletes made the nation realize that the drug war had entered a new phase and that we needed new legislation to fight the drug war on more fronts. We needed new tools to tighten the penalties on drug possession, create substantial penalties for money-laundering and manufacturing illegal drugs, respond more quickly to the development of substance-abuse analogues, apply more resources to drug interdiction, ensure that critical federal employees do not abuse drugs, and develop a variety of techniques to cut the demand for drugs. The resources authorized in the Anti-Drug Abuse Act were appropriated in the Omnibus Drug Supplemental Appropriation Act of 1987, and the authorized programs that involve direct federal effort are being continued and accelerated in 1988 and 1989.

Recently, I had an opportunity to announce the results of a study conducted by one of the Department's components - the National Institute of Justice. This study involved over 2,000 prisoners in 12 cities who had been arrested on serious criminal charges other than drug-related activities and who agreed to take a urine test that could identify the presence of 10 drugs. Depending on the city, between 53 and 79 percent of those arrested tested positive for drugs. Unfortunately, the use of drugs by criminal suspects appears to be rising, and almost two-thirds of the criminal cases involving judicial proceedings are for narcotics violations.

More encouraging news, however, comes from the National Institute on Drug Abuse. For the first time since the Institute began its annual survey of high school seniors in the early 1970's, cocaine use has dropped by one-third. Ninety-seven percent of those polled in 1987 disapproved of regular cocaine use and 87 percent disapproved of even trying it. Marijuana use was the lowest since surveying began. There are a lot of other drugs that are being abused, but we are somewhat encouraged that abuse by the general population does not seem to be growing. I'll have more to say later about what our agencies are doing about drug abuse when we deal with the various budget requests, but I did want to take this opportunity to say that legislation Congress enacted and the President's program for a drug free America give us some reasons to believe that we are making real progress. To continue that progress, we must further strengthen our efforts to enforce the law and discourage the demand for drugs. The budget I will be presenting today supports this.

Immigration Reform

This Administration and the Congress worked long and hard to amend the immigration laws; and a little over a year ago, the Congress enacted the Immigration Reform and Control Act of 1986. It balanced the nation's need for controlling illegal immigration while preserving the proud tradition of legal immigration. This Act contained three key provisions -- employer sanctions, increased enforcement authority, and legalization. While the first two required resources which Congress provided in both the Supplemental Appropriations Act of 1987 and the regular 1988 appropriations, the legalization program is self-financing.

The new legislation significantly increased the responsibilities of the Immigration and Naturalization Service

(INS), the Executive Office for Immigration Review and the Civil Division. The new legislation also established a Special Counsel for Immigration-Related Unfair Employment Practices.

In implementing this legislation, the INS has done very well. Employers have been told that they must seek to employ only legally authorized workers and they have been generally cooperative. Farmers have found that their crops can be harvested if they plan ahead and use the Special Agricultural Worker program that was enacted.

With respect to the legalization program, the INS has been able to process applicants for legalization promptly, and the fees set have been adequate to cover expenses. Also in that regard, the INS has embarked on a major public awareness campaign to encourage filing under this program by all eligible aliens before the May 4 deadline.

During the first year of this new system, the available enforcement resources were directed primarily at implementing the employer sanctions of IRCA. We are now moving to accelerate our training to provide the additional resources envisioned by the new law. We are pleased to note that the combination of employer sanctions and increased personnel along our southern border may explain why border crossing apprehensions have been cut by 32 percent from 1986 to 1987. In addition, the authorization of many INS officers to make drug seizure arrests has resulted in the Border Patrol, under Operation Alliance, seizing 61 percent of all the marijuana seized between ports of entry along the southern land border.

Bankruptcy Trustee Legislation

Another piece of legislation that has broadened the responsibilities of the Department is the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986. Under this Act, the former pilot program established to supervise bankruptcy programs was made a nationwide program.

Initial funds were appropriated to launch the program in 1987 and 1988, but in 1989 the fees accumulated from bankruptcy filings will be adequate to convert the program to a self-financing basis.

Recent and Pending Legislation

During the first session of the 100th Congress, several pieces of legislation supported by the Administration were passed. These included the Criminal Fines and Sentencing Act, the Criminal Fine Improvement Act, and the Criminal Penalties for Violation of Aviation Safety Report Requirements Act. Several titles of the continuing resolution for 1988 amended the legal status of certain aliens already in or seeking admission to the United States. In 1989 we look forward to the enactment of the Criminal Justice Reform Act that has already been introduced in the Senate, the Child Protection and Obscenity Enforcement Act, the Federal Debt Collection Procedures Act, the Drug Precursor and Essential Chemical Act, and a number of acts dealing with fraud and procurement reform.

Department of Justice Authorization Act

This year the Department of Justice will again submit to the Congress a bill to authorize appropriations for most of the components of the Department. As you know, we have not had an authorization act forwarded to the President during this entire Administration. The 1980 authorization act has been extended annually with special provisions for undercover operations of the Federal Bureau of Investigation and the Drug Enforcement Administration. The authorization bill we are submitting for this year is almost identical to the one submitted last year except that the United States Marshals Service Act, which was part of our authorization bill last year, is being submitted separately. Prompt enactment of an authorization bill would enable the Appropriations Committees to move forward on appropriations matters with clear direction on related authorization issues and to eliminate from the appropriations act a number of provisions that are more appropriately placed in the authorization act or permanent law.

Budget Trends

During 1987 and 1988, the Department's budget was driven by the need to implement new legislation and to house an increasing prison population. One result of our increasing effort to fight crime, and, in particular, drug related crimes, is that the number of criminals serving time in Federal prisons has increased dramatically - nearly 85 percent since 1981. We anticipate that the Federal inmate population will continue to increase in the future, particularly in light of the Anti-Drug Abuse Act of 1986 and the new sentencing guidelines. Priority must be given to constructing and activating more prisons, and adding more jail space near the Federal courts for those being brought to trial. Resources must continue to be added to bring the Department into the age of automation, and investigative and prosecutive efforts must be enhanced to deal with serious crime. As the nation's principal law firm, we must affirm and defend the Government's interests and collect debts from those who have not honored their commitments.

Finally, we will continue to find new and better ways to minimize the budget impact of our activities. Earlier in this Administration, the Congress authorized the Federal Bureau of Investigation to establish fees to cover the cost of non-criminal fingerprint identification. During the last few years we have established a budget-neutral Assets Forfeiture Fund that has allowed us to use the assets of criminals to fight crime, we have used criminal fines to fund the various activities authorized by the Victims of Crime Act, we have funded increased immigration inspections at airports and seaports through the Immigration User Fee, and we have operated and used the Immigration Legalization account to fund fully the program under which eligible aliens can gain permanent resident status. In 1989, as I said earlier, the Bankruptcy Trustee System will be self-financing.

For appropriated funds, in the spirit of the Budget Summit Agreement reached last November, we are presenting a budget that is largely designed to strengthen and consolidate our core objectives of establishing justice and insuring domestic tranquility.

1989 Budget Request

The budget request that I am presenting for 1989 seeks $5.6 billion in direct appropriations to support 75,100 permanent positions. This continues the basic objectives contained in our budget request for FY 1988, and we continue to make every effort to utilize these funds in the most effective manner.

In law enforcement, our plans are to continue to devote a major portion of our resources to the fight against drug trafficking and to providing prison facilities for those who are convicted. To augment our drug enforcement efforts and to insure prosecution of those who participate in drug-trafficking, our request addresses the personnel requirements of the DEA, the FBI, the United States Attorneys and our burdened Bureau of Prisons. The resources requested for the Marshals Service address the need for security in the courts and for housing and transporting unsentenced prisoners being held in custody.

Although the drug war requires unremitting efforts, we cannot forget the resources that are necessary to fight organized crime, white collar crime and public corruption. We must show the American public that we will not tolerate defense procurement fraud, bank fraud and embezzlement, and other actions that undermine the basic fabric of those institutions in which we put our trust. We must also insist that people who owe the Government money pay their long overdue bills.

To accomplish these objectives, we need not only to maintain the sufficiency of our personnel resources but also to equip our workforce with the tools necessary to operate in an increasingly sophisticated environment. We must always bear in mind that deferring capital investment can be hazardous not only to the effectiveness of our war against crime but also to the physical security of those who work in the law enforcement occupations.

Understanding the Budget

As I mentioned earlier, we are constantly made aware of how the components of the criminal justice system interact. A vigorous drug enforcement policy, for example, when reinforced by adequate statutes, dedicated U.S. Attorneys and a tough judiciary, results in the need for more jail space and expanded prison capacity. Better statistics and intelligence at all levels help law enforcement agencies deploy their resources more effectively. Even immigration, a matter once handled almost exclusively by the INS, now has a direct effect on the workload of a number of the Department's other organizations. The Cuban uprisings at Atlanta and Oakdale highlight how the skills of many organizations may be successfully applied in emergency situations. Although I could mention many other examples of interdependency, I think we can best understand the budget if we take a look at what we are planning for the established organizations.

Drug Enforcement Administration

The core of our drug enforcement program, of course, is the Drug Enforcement Administration. In 1989 we are asking for $538 million and 5,887 positions. Recent events have demonstrated the importance of our resolve to battle drug traffickers wherever we find them. The murder of Colombia's Attorney General, Carlos Mauro Hoyas, the pervasive corruption of the police force of a major American city, and the almost daily drug-related murders in our nation's capital are all reminders of the horrible price that drug trafficking exacts. The recent murders of DEA special

agents Paul Seema and George Montoya and the wounding of Jose Martinez in Pasadena, California remind us that this is a deadly business not just abroad and within the community of drug dealers and users; it is also life-threatening to our dedicated agents here at home.

Following an infusion of new agents in the Drug Enforcement Administration in the last two years, the focus in 1989 is to give the work force the tools that will make them most effective. One priority is to modernize and expand DEA's air wing to improve surveillance of domestic drug operations and to help foreign governments suppress the growth and export of illegal drugs. This will require 47 positions and $19 million. Another 76 positions and $9 million will be needed to improve DEA's intelligence and information systems, including the enhancement of the El Paso Intelligence Center. Finally, we must provide 75 positions and $6 million to deal with the increasing flow of seized assets by establishing more Asset Removal Teams, increasing the return on seized assets, and providing better overall support for our increased agent staffing.

Federal Bureau of Investigation

Today we are asking for $1.5 billion and 22,988 positions for the Federal Bureau of Investigation. As part of our strategy for making more headway against drug traffickers, the FBI has intensified its drug efforts. In support of these efforts, the budget request includes an additional 79 positions and $3.6 million. In addition, the 1989 request includes increases totaling 846 positions and $91.9 million with emphasis placed on resources to combat organized crime, white collar crime, terrorism, and the continuing threats of hostile intelligence services in the United States.

The resources requested will intensify our efforts to eliminate La Cosa Nostra (LCN) and other organized criminal groups; and to reduce corruption, fraud, and embezzlement in government programs, private sector businesses, banks, and labor unions.

Increased support for the FBI's investigative activities will be accomplished through technological enhancements in the automated data processing and telecommunications program and the technical field support and equipment program, including such items as the further development of artificial intelligence expert systems, electronic surveillance equipment and continued implementation of the digital voice privacy radio system.

Additional resources are also sought for the FBI's Automated Identification System to improve productivity and provide more timely and accurate fingerprint identification services to federal, state, and local criminal justice agencies. These efforts will continue one of this Administration's goals -- to foster communication among various criminal justice agencies.

Litigation Needs

Once the FBI, the DEA, and other investigative agencies develop their cases, they are turned over to the U.S. Attorneys or one of our litigating divisions for disposition.

In the war on drugs, the U.S. Attorneys will require 309 positions and $12.9 million to expand prosecutions of significant cases and to emphasize criminal proceedings related to asset seizure.

Prosecution of white collar crime continues to be one of the Administration's principal litigative priorities. The 1989 budget request seeks 65 positions and $3.1 million to broaden efforts on complex and lengthy investigations and prosecutions of defense procurement fraud, bank fraud, insider securities trading and cases involving corruption of public officials. The budget also contains a request for 39 positions and $3.5 million to cover a dramatically increasing environmental enforcement caseload.

The scope and complexity of much of the litigation pursued by the Justice Department requires the use of automated litigation support (a system of records management for the maintenance and retrieval of case-related documents) to help ensure success at trial. The Department requires an additional $8.6 million for automated litigation support in 1989 for the Civil, Tax, and Land and Natural Resources Divisions. The consequences to the Treasury of not employing automated technology in massive and complex cases may reach into billions of dollars in losses annually.

The budget request for the United States Attorneys includes 10 positions and $437,000 to improve prosecution of child pornography and obscenity cases that are being developed by the U.S. Postal Inspection Service and the U.S. Customs Service. The request for the Civil Rights Division includes nine positions and $305,000 to expand litigative efforts into voting rights violations and to strengthen fair housing enforcement.

Debt Collection and Recovery of Money

Of course, the reason why we are here today is that these efforts require resources, and that means money. While it is appropriate for citizens to contribute to this effort to prevent the threat of crime and thereby help to establish justice and insure domestic tranquility, no honest taxpayer should have to pay more because some people who owe the government money are willfully refusing to pay. Here, too, the Department of Justice is doing all that it can to help.

To give you some idea of how important this investment -- it's really not an expenditure -- is, our best estimates for FY 1987 show that the Department as a whole spent $14.9 million on debt collection matters, and collected $357.3 million, a return on investment of about 2300%. And that doesn't even include the amount collected on behalf of our client agencies such as the Internal Revenue Service. Moreover, this record can be expected to increase as we implement our recently-announced Operation

Deadbeat, which grew out of the hard work and creative ideas of some of our excellent United States Attorneys.

Our budget request for FY 1989 includes 80 positions and $2.9 million for the U.S. Attorneys to address the serious backlog of debt collection cases. Tremendous growth over the past three years will be compounded by an expected continued increase through 1989. These personnel will allow the Department to expand its debt collection efforts and increase cash collections to the Treasury.

The Department will also provide full funding to continue the new initiatives to use private counsel to recover civil debts. This initiative, which will be implemented on a pilot basis in ten judicial districts by 1989, will greatly expand the Government's ability to collect delinquent debts.

To ensure that the Department's debt collection resources are used efficiently, we are requesting $10 million to be used solely to facilitate debt collection activities. These funds will enhance effective debt collection by providing money for training, tracing debtors and assets and paying costs not covered by the sale of forfeited property. Although contained within the U.S. Attorneys appropriation, these funds will be available to enhance debt collection activity throughout the legal offices of the Department.

Marshals Service

One very necessary link in the criminal justice system is the Marshals Service. Its mission includes protection of the federal judiciary, protection of witnesses, execution of warrants and court orders, and the custody and transportation of unsentenced prisoners.

The 1989 request for its "Salaries and Expenses " appropriation is for $207.6 million to support 3,025 positions. The Marshals Service also manages the "Support of U.S. Prisoners" appropriation where we are requesting $118.3 million, and it coordinates the financial activities of the Assets Forfeiture Fund. While the Fund is to spend $200 million in 1989, it is actually, like our debt collection program, more than self-financing. Our best estimates are that in FY 1987, the seizure and liquidation of criminals' assets cost the Department $69.6 million. But we realized during that year $177.6 million, a return on investment of 150%. And even that figure is probably low since the realization, in many instances, was on assets seized earlier when the investment was lower.

We are asking for several enhancements for the various activities of the Marshals Service, principally because of the overall additional workload generated by the enhanced drug enforcement effort. Reports from the courts show that in a recent year 7,894 of the 12,501 criminal cases involving judicial proceedings related to narcotics violations. This requires not only more Deputy U.S. Marshals to provide court security and other services, but an increase of $44.5 million to obtain more guaranteed jail space and care for the unsentenced federal prisoners in state and local facilities.

Federal Prison System

As a result of the Reagan Administration's commitment to the detection, investigation, and prosecution of serious crime, the population of the federal prison system has increased 85 percent from 23,783 in fiscal year 1981 to approximately 44,000 today. In 1981, the population exceeded rated capacity by only 2.6 percent. Today it approaches 60 percent. The continued implementation of the Comprehensive Crime Control Act of 1984 and the Anti-Drug Abuse Act of 1986 and the new sentencing guidelines that were implemented on November 1, 1987 will continue to drive up the Federal prison population to at least 72,000 by 1995. These reforms represent continued progress; to a large degree, however, the underlying problems are drug trafficking and abuse. Thirty-seven percent of our prisoners in the Federal Prison System are incarcerated for direct drug violations and some unknown additional number are there for crimes committed to support a drug addiction or committed while actually under the influence of drugs.

Prison Construction and Modernization

Our request for $436.6 million for the "Buildings and Facilities" appropriation of the Federal Prison System is a grim reminder that the courts have sentenced a great many people to a correctional system that is unable to house them properly. Our 1989 request includes:

(1) $226.9 million to construct four new federal correctional institutions, adding 3,200 new bedspaces in the Northeast, Southeast, and South Central areas;

(2) $82 million to construct 850 new federal detention bedspaces in the Northeast and Puerto Rico;

(3) $12 million to acquire and convert a surplus facility in the Southeast, and add 500 beds;

(4) $39.3 million to add 850 additional beds at seven satellite facilities of existing institutions; and

(5) $60.9 million for major renovation projects, upgrading the security level at two facilities, and improvement projects at several other institutions. In addition, authority is being sought to undertake a long-term leasing program for three medium security prisons, with 800 bedspaces each, to be staffed and managed by the Federal Prison System.

Federal Prison Operations

Operating our Federal Prison System will cost us $934 million in 1989. Of this amount, $102.1 million will go for the activation of prison facilities that will provide 6,520 bedspaces. Approximately 40 percent of this activation funding will go toward the activation of four major Federal Correctional Institutions at Sheridan, Oregon; Bradford, Pennsylvania; Jesup, Georgia; and Fairton, New Jersey. We will also open a detention unit at Pleasanton, California, expand existing camps at six locations, open additional housing units at four other facilities and activate five surplus facilities. To reduce the burden on existing staff at overcrowded institutions, we are asking $32.9 million to support 1,602 additional positions. Moreover, the 1989 budget request will annualize our support for a number of facilities activated in 1988, expand the use of community treatment centers, provide necessary provisions for a major population increase, and cover other uncontrollable expenses.

Criminal Justice Cycle

From the investigation of a serious crime through the end of a prison sentence, the criminal justice system goes through many phases. For those who remain under Federal supervision, three organizations have significance - the Parole Commission, the Sentencing Commission, and the Probation Service. Now that the sentencing guidelines are in effect, the Administration is proposing limited reductions for the Parole Commission. Before a decision is reached on the Parole Commission's budget, however, we must carefully watch the challenge that is being made to the constitutionality of the work of the Sentencing Commission.

Summary of Drug Efforts

We are repeatedly asked "what is the best investment of resources in order to disrupt the drug trafficking establishment?" In 1989, we are requesting a total direct funding anti-drug budget of $1.5 billion, $206 million over our 1988 appropriation. This investment represents an increase of 311 percent in funding since 1981. Over the years, we have invested our resources in the areas which have proved to be most productive, and we plan to continue this strategy in FY 1989.

One of the most effective ways to assure that drug traffickers are investigated and prosecuted is through interagency and intergovernmental cooperation. The Organized Crime Drug Enforcement Task Forces, State and Local Task Forces, the Asset Forfeiture Equitable Sharing program, and enhanced laboratory services are successes in this proven method of combatting the war against drugs. Most notably, we initiated and/or participated in special programs and operations such as Operation Alliance and the National Narcotics Border Interdiction System (NNBIS), all involving a significant investment in investigative resources and requiring full cooperation on the part of the Department of Justice. Finally, through its participation in the National Drug Policy Board, the Department has led and participated in the development of a comprehensive national strategy to deal with the nation's number one crime problem. By the end of this Administration, the federal government will have experienced the most significant buildup of resources committed to the "War on Drugs" during any one presidency. In the Department of Justice alone, direct funding for the anti-drug effort will have quadrupled, reflecting the Administration's commitment to a drug free America.

Immigration and Naturalization Service

The 1989 budget request for the INS is $859 million. The programmatic impact of our appropriation request is minimal, since the 1988 program will be largely supported by $94 million carried forward from the Supplemental Appropriations Act for 1987. Of the requested amount, $38 million is requested to fund more fully the 4,316 positions already provided to carry out the Service's expanded responsibilities under the Immigration Reform and Control Act of 1986. The remaining resources include funds requested to activate two new detention centers constructed from funding provided in the Supplemental Appropriations Act of 1987.

Bankruptcy Trustees

As I mentioned earlier, the United States Trustee System, made nationwide and required to be self-financing by the

Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, will, by 1989, have in the System Fund sufficient funds collected from fees and other charges that it will require no future appropriations.

Office of Justice Programs

The Office of Justice Programs (OJP) provides a variety of services to the entire law enforcement community -- services that are of a multi-state and national focus. It carries out the federal policy in law enforcement while providing a vehicle for federal-state cooperation. For example, the work of the National Institute of Justice, a component of OJP, involves developing new methods for prevention and reduction of crime, and sharing such information with state and local governments. The program run by the Bureau of Justice Statistics serves both state and federal objectives because data are collected and analyzed with a standard methodology and then made available for common use. The Missing Children's program serves a national need because states are often unable to investigate and prosecute effectively lawbreakers who flee across state lines.

Asset Forfeiture Sharing

Finally, other direct assistance is provided to state and local governments through our Equitable Sharing program, which uses the criminals' ill-gotten gains to benefit law enforcement. In 1987, we distributed $64 million in cash and property; in 1988 we anticipate dispersing $81 million; in 1989, this should grow to $112 million. This sharing represents a quick return, especially to the local law enforcement agencies who need the resources. Because this program is one in which local law enforcement officials see that their efforts result in an immediate, direct resource benefit and because there is really no artificial limit to the value of resources that can be made available through equitable sharing -- it's basically proportionate to the level of effort expended by a specific law enforcement organization on a specific case -- I believe it is an excellent alternative to direct grant programs.

Other Changes

The growth of the Department makes it necessary to ask for additional funds in the General Administration appropriation to keep pace with our other responsibilities. The budget request for General Administration includes $4 million for the Executive Office for Immigration Review to address the increased workload that is developing from the Immigration Reform and Control Act. In addition, $1.4 million is requested to handle an increased volume of financial transactions, provide for the cost of increased security measures, continue our current program to use the private sector to collect delinquent debts, and increase our management and productivity staff to assure that the Department is using the most economical means to achieve its objectives.

The already small Foreign Claims Settlement Commission will be reduced in size as its workload decreases. We are estimating that carryover resources that may become available from our 1988 appropriations will compensate for the budget reductions proposed for Fees and Expenses of Witnesses.

Privatization

The Department of Justice is participating in the Administration's plans to transfer appropriate functions to the private sector. Of all the departments of government, however, we have, perhaps the hardest job doing that because we represent the police power of the federal government -- a core executive function that cannot be privatized. Most significantly in this context, we propose to explore three innovative methods of private sector involvement in the federal prison system. The most conventional approach is to have private industry build a prison and lease it to the federal prison system. Another alternative is to use contractors to build and operate a minimum security facility. Finally, we plan to study the possibility of one of our prison industry facilities being operated by private industry. The evaluation of these pilot efforts should provide insight into the feasibility of using the private sector to help solve some of our prison problems. The financial aspects of these proposals are explained more fully in the federal prison system's budget.

Another promising proposal for privatization is one that I mentioned earlier: our new pilot program to use private counsel to assist us in our debt-collection efforts.

Conclusion

Looking back over the years of the Reagan Administration, I think we can take pride that we had the vision to recognize how the criminal justice system could be improved. We thank the Congress for helping that system by passing important legislation and providing funds where they were most needed. We all recognize that the federal deficit necessitated limitations, but I am not hesitant to say we did the best we could and I strongly believe the 1989 budget gives proper emphasis to our most vital needs.

I would like to thank the Committee for this opportunity to present the views of the Department of Justice.

RESIGNATION OF TOP OFFICIALS

Senator HOLLINGS. General Meese, the concern now, of course, of the Appropriations Committee is providing funding to an Attorney General's Office that is seemingly in disarray. We know now that four department heads, the Deputy Attorney General, the Associate Attorney General, the Criminal Division, and Legislative Affairs are vacant. We see in this morning's headlines that three more senior officials have quit the Justice Department.

Can the Department of Justice continue on efficiently and effectively under these circumstances?

Mr. MEESE. Yes, Mr. Chairman.

Actually, the newspapers don't have it quite right. We have only had a few. Two people recently resigned from the Department. We had one person who was leaving, which was planned for a long time. He recently left to assume a judgeship.

The other vacancies, the people, for example, mentioned from the Department, were personal staff members of the two who resigned. So there has been a considerable exaggeration. Out of the 29 component heads and other top officials in the Department, we have only lost that small number, and the Department is operating very well.

While we go through the normal selection and appointment process, we have very excellent people acting in these capacities, and I don't anticipate any problem in the management of the Department.

Senator HOLLINGS. It is indicated that while you have been cleared yourself by the Independent Counsel, Mr. McKay, evidently members in your own Department think that certain improprieties are serious enough to cause their resignation.

What is your comment about their leaving?

Mr. MEESE. I think that those people will have to speak for themselves. I understand that they will have that opportunity at some point before an appropriate committee. I think they ought to speak for themselves as to whatever their motives might have been.

I have found the fact that these members are leaving the Department has not interfered with or hindered in any way our operations. It has not affected the overall performance of the Department, and I don't believe that it will have any impact.

EXPENSES ASSOCIATED WITH INDEPENDENT COUNSEL INVESTIGATION

Senator HOLLINGS. With respect to the Independent Counsel's investigation, which has been on-going for almost 2 years, having been cleared, you have legal expenses no doubt?

Mr. MEESE. The Independent Counsel's investigation, as far as I am concerned, has been going on for approximately 1 year.

Senator HOLLINGS. I thought that it started about May 1987, so it is about 1 year. I stand corrected.

What are your anticipated legal expenses now that you have been cleared?

Mr. MEESE. I have no idea because I don't know how long it will take before the report is finally in and what additional activities may be involved on the part of my lawyers. However, while I don't have that figure available now, I would be happy to provide it to the committee as to what it is up to date.

Senator HOLLINGS. We would appreciate it. You know, it cost us some $472,000 to pay the expenses during your confirmation, and now we have to pay these expenses. You are a pretty expensive Attorney General.

Mr. MEESE. I don't say that it is expense caused by me, Mr. Chairman. I would say that those are the prices we pay for the Independent Counsel Act.

INS LEASED PROPERTY

Senator HOLLINGS. In an effort to clear up the other impressions made, we have on page 62 of the Immigration and Naturalization Service budget some $44 million in rentals with a $5 million annual lease fee for the building recently leased by the Immigration and Naturalization Service.

They say that for this building, with a value around $37 million, your office gave a $50 million lease, and thereupon it was sold for some $60 million. The report in the public media, as you have no doubt heard, that the Benders owning that building were able to obtain that very remunerative lease because they had provided the money for Mrs. Meese's employment at the Multiple Sclerosis Society. Do you wish to comment on that?

Mr. MEESE. I appreciate the opportunity to comment, because that statement is absolutely untrue. There was no connection whatsoever between those two facts.

As a matter of fact, neither my wife nor I even knew that Mr. Bender owned any buildings that were leased to the Federal Government and to the Justice Department until we saw it in the news media sometime last week.

Furthermore, the Benders did not provide money to my wife, they provided a charitable contribution to the Multiple Sclerosis Society, where my wife is employed there as The Development Director. Furthermore, I, at no time, had anything to do with any lease pertaining to those buildings. I had no knowledge of any such leases, and I was not in any way involved.

I am very much concerned and upset by the outrageous and scurilous attacks in the press on this subject. I think that stooping to try to attack a person's wife to get at them politically is the lowest of journalism. I appreciate this opportunity to clarify the record to this subcommittee.

Senator HOLLINGS. You, yourself, were not involved in that lease?

Mr. MEESE. Not in any way, nor did I have any knowledge of it.

REGIONAL INFORMATION SHARING SYSTEM

Senator HOLLINGS. Going to the Regional Information Sharing System, according to a news release of the International Association of Chiefs of Police, you indicated to them last December 18 that funding for RISS would be included in the 1989 budget. The release says that you personally communicated your support for the Regional Information Sharing System and your commitment to full funding at $12 million for fiscal year 1989.

Yet, according to the budget history obtained from your office, no funds were requested for the RISS program by either the Office of Justice Programs or the Department. Why then did you tell the Chiefs of Police that funds were budgeted?

Mr. MEESE. Mr. Chairman, at the time that the budget was submitted, because of the deadlines that were necessary, we were still undergoing a review of a survey that I had requested from the International Association of Chiefs of Police, and that is why the budget was submitted without that item in it.

Since that time, I have persuaded the Office of Management and Budget, and they now concur, that we should proceed with the appropriation for the $12 million for the Regional Information Sharing System. We will submit to the subcommittee a proposal for reprogramming, within the budget we submitted, which will provide the funds for this purpose. We are very definitely in support of that matter.

Senator HOLLINGS. To complete the record on RISS I will insert at this point a news release dated February 10, 1988, from the International Association of Chiefs of Police as well as the Department's budget chronology that I referred to earlier.

[The information follows:]

IACP NEWS

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE / Thirteen Firstfield Road / P.O. Box 6010 / Gaithersburg, Maryland 20878 / (301) 948-0922

FOR IMMEDIATE RELEASE:
Wednesday, February 10, 1988

CONTACT: Dan Rosenblatt
(301) 948-0922

RUG PULLED OUT FROM UNDER US BY ADMINISTRATION: RISS ZEROED OUT AGAIN, SAYS IACP'S CASEY

GAITHERSBURG, MD -- IACP President Joe D. Casey, Chief of Police in Nashville, Tennessee, today issued the following statement:

"After a year of intense efforts by the International Association of Chiefs of Police on behalf of the RISS Program (Regional Information Sharing Systems), IACP'S executive director was informed by U.S. Attorney General Meese that we had reached our goal: The RISS Program would be included in the FY '89 budget; the Attorney General was supportive of the program and had agreed to full funding in the coming year. This news came in a meeting with the Attorney General on Friday, December 18th.

Representatives of the Fraternal Order of Police, PERF, and the National Sheriff's Association also attended this meeting. The Justice Department was represented by Bradford Reynolds, Assistant Attorney General for the Civil Rights Division, and John Bolton, Assistant Attorney General for Legislative Affairs. Assistant Secretary of the Treasury, Frank Keating, also participated. During the meeting, the Attorney General **personally** communicated his support for the RISS program and his commitment to full funding at the $12 million level for FY '89.

This news was quite welcome, because since the early 80's, every budget year brings another legislative fight for funding for the projects due to the Justice Department's opposition. Every year, Justice recommends that these projects be zeroed-out of the federal budget and taken over by the state and local government. The Department argues that these projects only benefit state and local governments and thus, should be funded by them. This is not true. Out of a total membership of 2,102 agencies across the country who belong to the seven RISS projects, 114 are federal offices. Federal agencies are certainly utilizing the resources of this program. Yet, every year, IACP, RISS project directors, and other interested law enforcement officials meet with key congressional members to argue the case for continued funding for RISS. This is a long and arduous battle and the outcome is never quite sure until the final budget reconciliation bill is signed by the President. We felt that 1989 would be different, based on the Attorney General's assurances.

However, on Friday, February 5th, we became aware that the 1989 budget, submitted by the Administration and to be released by the President on February 18th, once again **deletes all funding for the RISS projects!!!** Joseph Morris, Director of the Department's Office of Liaison Services, states that the Attorney General supports the RISS projects, but his support was overruled by OMB (Office of Management and Budget), preparers of the federal budget, and the top fiscal administrator appointed by and serving at the pleasure of the President.

To put it bluntly: we are not persuaded by this argument. The Attorney General is the top law enforcement official in the country and also the President's "right hand man". If indeed the RISS projects are a priority for him, we believe his influence alone could translate RISS into a federal budget priority. OMB should not dictate law enforcement priorities to the Attorney General. Surely it should be the other way around!!

During the 100th Congress, IACP has devoted much of its legislative efforts to RISS. IACP's concern with the program stems from the fact that law enforcement benefits significantly from the projects. RISS consists of seven multistate projects that are designed to provide regional criminal information exchange in organized crime and drug trafficking cases and other related support services to federal, state and local law enforcement agencies located in all fifty states. The member agencies benefit from the coordinated partnership formed among members in a specific geographic region and extended among regions, nationwide. The technical equipment and assistance provided by RISS is typically beyond the local agency's abilities and allows complex cases to be continued to a successful conclusion.

In 1987, IACP conducted an on-site visit to ROCIC, the oldest RISS project, located in Nashville. The association studied the history of the projects, their present organization and capabilities. Based on this review, an in-depth report for the Attorney General was prepared that specifically addressed the Justice Department's concerns and showed how these concerns are either non-existent or have been resolved.

So, once again the rug has been pulled out from under us and we are left without support for a critical law enforcement operation. Once again, this Administration, one that proclaims itself a friend of law enforcement, interested in the needs and concerns of law enforcement, sensitive to input from state and local law enforcement, has let us down. The lack of support funding for RISS is reminiscent of a lack of Administration support on plastic gun legislation, substantial reductions in state and local narcotics assistance funding, and assessing "user fees" at the FBI Academy.

So once again, we will begin the battle for RISS funding. We will continue to meet with members of congress, we will distribute copies of the RISS study, and we will publicize the projects' successes. And we believe that we can convince the Congress to continue funding. But we will no longer be listening to the hollow promises of the Administration. We now understand the situation for what it is."

The International Association of Chiefs of Police is the world's oldest and largest, non-profit police executive membership organization. Established in 1893, the IACP has more than 14,500 members in 68 nations around the world.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 18, 1988

Senator Ernest F. Hollings
Chairman, Subcommittee on the Departments
  of Commerce, Justice, and State, the
  Judiciary, and Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Senator Hollings:

This is to respond to your March 3, 1988 request to the Attorney General for a complete history of the Department of Justice's FY 1989 budget estimates. Your request specified that we should provide the requests of the agencies to the Department, the Department's request to the Office of Management and Budget, and the amounts requested in the President's budget.

As you know, the 1989 requests received in the Department and sent to the Office of Management and Budget were submitted months before the Congress acted on the 1988 budget. Adjustments were made late in the process because of the need to generate a revised 1989 budget base in line with final Congressional action on our 1988 appropriations. It should also be noted that the requests prepared by individual organizations do not necessarily address the problem of integrating the various administration of justice functions into a well balanced package. Furthermore, neither the Departmental components nor the Department itself are in a position to address the overall budget priorities of the Administration or the problem of meeting the deficit reduction targets required by the November 20, 1987 Budget Summit agreement.

Sincerely,

Tom Boyd

Thomas M. Boyd
Acting Assistant Attorney General

Enclosure

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

May 26, 1988

The Honorable Edwin Meese, III
Attorney General
Department of Justice
Constitution Avenue between
9th and 10th Streets
Washington, D.C. 20530

Dear Mr. Attorney General:

During the Subcommittee's FY 1989 hearing on April 20, 1988 I brought up the matter of your request to eliminate all funding for the Regional Information Sharing System (RISS) in your FY '89 budget submission in light of your expressed support of the program. You assured the Subcommittee that you did indeed support RISS and would submit a reprogramming request for continued funding within the Department's FY '89 budget.

It has now been over a month since your testimony and a reprogramming request to fund the Regional Information Sharing System has not been received by this Subcommittee. We are scheduled to markup the FY 1989 Commerce, Justice, State and the Judiciary Appropriations Bill early next month. It is imperative that your official request for continued funding of the RISS program be sent to the Subcommittee no later than June 6, 1988.

With kind regards, I am

Sincerely yours,

Fritz Hollings

Ernest F. Hollings
Chairman, Subcommittee on
Commerce, Justice, State,
the Judiciary

Office of the Attorney General
Washington, D.C. 20530

7 June 1988

Honorable Ernest F. Hollings
Chairman, Subcommittee on the Departments
of Commerce, Justice, and State,
the Judiciary, and Related Agencies
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As promised in my testimony before your Subcommittee, I have reviewed several options to reallocate resources within the budget we submitted to provide 1989 funding of $12 million for the Regional Information Sharing System (RISS).

After careful review of these options, I have selected a proposal which best utilizes our resources. The proposal involves a combination of 1989 budget amendments for the Office of Justice Programs (OJP) and the General Legal Activities (GLA) appropriations, as well as a 1988 supplemental transfer request moving funds from the Immigration and Naturalization Service (INS) to OJP's RISS program. We, of course, would also submit a language change converting the 1988 INS funds from "annual" to "no year" money to permit the use of these funds in 1989. The specific appropriations and programs from which the RISS funds would be derived are as follows:

Appropriation/ Program	(in thousands) Amount
1989 Budget Amendments	
OJP	
Emergency Assistance	$ 1,200
Juvenile Justice (JJ) Reversionary Funds	3,000
GLA	
Legal Activities Office Automation (LAOA) project	3,800
Supplemental Transfer	
INS (1988 Funds)	4,000
Total	12,000

The 1989 Emergency Assistance funds are proposed to provide for the RISS program because only one grant has been awarded under this program since 1985. As you are aware, we have recently submitted a reprogramming notification to the Congress which will reallocate $800,000 of the 1988 Emergency Assistance funds to the National Institute of Justice. Although the 1988 reprogramming and the use of the entire 1989 Emergency Assistance fund for RISS would leave only about $400,000 of carryover funds in this account, we believe this amount will be adequate to provide for 1989 requirements.

The JJ Reversionary funds, as you know, are typically available each year because there are several States which do not participate in the JJ program.

The funding of $3.8 million from the LAOA account represents a portion of the 1989 requested budget increase for LAOA. Although automation within the Department's legal activities is one of our highest priorities, we expect some slippage in the projected contract award dates for the automation projects.

The funding from INS's 1988 budget authority represents the projected year-end surplus arising from an inability to fill many of INS's new created positions as early as planned in FY 1988. I would like to point out, however, that INS expects to be fully staffed as it begins FY 1989 in October.

This proposal represents what I think is the most viable funding option at this time. Thank you for your interest and support in this matter.

Sincerely,

EDWIN MEESE III
Attorney General

DEPARTMENT OF JUSTICE
APPROPRIATION HISTORY 1989
(DOLLARS IN THOUSANDS)

APPROPRIATION	1988 APPROPRIATION		1989 ORGANIZATIONS REQUEST TO THE DEPARTMENT		1989 DEPARTMENT REQUEST TO OMB		1989 REQUEST TO CONGRESS	
	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT
GENERAL ADMINISTRATION:								
DEPARTMENT LEADERSHIP	56	5,823	68	8,041	68	8,150	56	6,003
EXECUTIVE SUPPORT	71	6,760	97	8,588	94	8,558	71	7,037
OFFICE OF INTELLIGENCE POLICY & PROFESSIONAL RESPONSIBILITY	22	1,973	26	2,198	26	2,231	22	2,029
JUSTICE MANAGEMENT DIVISION	590	43,312	669	56,756	680	57,441	589	48,246
ADMINISTRATIVE REVIEW AND APPEALS	477	30,492	710	55,449	640	45,151	583	37,487
TOTAL, GENERAL ADMINISTRATION	1,216	88,360	1,570	131,032	1,508	121,531	1,321	100,802
WORKING CAPITAL FUND	...	...	...	...	...	...	...	...
U.S. PAROLE COMMISSION	179	11,665	179	12,865	161	11,539	161	10,893
GENERAL LEGAL ACTIVITIES:								
SOLICITOR GENERAL	49	4,140	49	4,475	49	4,470	49	4,232
TAX DIVISION	621	36,859	854	59,320	691	50,474	621	38,593
CRIMINAL DIVISION	769	50,508	881	63,061	833	59,196	794	52,819
CIVIL DIVISION	881	83,534	1,082	119,799	1,049	111,564	881	92,925
LAND AND NATURAL RESOURCES DIVISION	349	26,194	427	39,127	427	39,567	388	32,178
OFFICE OF LEGAL COUNSEL	35	2,564	38	2,988	38	2,814	38	2,721
CIVIL RIGHTS DIVISION	400	25,263	420	28,945	418	28,552	409	26,041
INTERPOL	44	3,513	95	6,727	78	6,096	52	4,616
INDEPENDENT COUNSEL	...	1,000	...	...	...	...	...	...
LEGAL ACTIVITIES OFFICE AUTOMATION	...	2,590	...	31,323	...	30,754	...	13,266
SPECIAL COUNSEL	30	2,044	60	4,607	60	4,458	37	2,795
TOTAL, GENERAL LEGAL ACTIVITIES	3,178	238,209	3,906	360,372	3,643	337,945	3,269	270,186
INDEPENDENT COUNSEL	...	7,000	...	5,000	...	...	...	7,000
ANTITRUST DIVISION	549	44,937	565	47,466	549	46,375	549	47,021
FOREIGN CLAIMS SETTLEMENT COMMISSION	9	500	9	524	7	480	7	472
U.S. ATTORNEYS	5,958	380,339	7,398	460,645	7,133	463,745	6,524	424,418
U.S. MARSHALS	2,864	183,168	3,392	305,616	3,187	234,631	3,025	207,582
SUPPORT OF U.S. PRISONERS	...	73,746	...	116,186	...	121,063	...	118,265
FEES AND EXPENSES OF WITNESSES	...	52,015	...	44,323	...	59,479	...	51,569
COMMUNITY RELATIONS SERVICE	118	27,858	136	35,112	123	31,763	118	28,815
U.S. TRUSTEES SYSTEM FUND	893	29,370	...	...	...	...	...	...
FEDERAL BUREAU OF INVESTIGATION	22,456	1,388,492	25,514	1,925,701	24,832	1,689,664	22,988	1,503,307
DRUG ENFORCEMENT ADMINISTRATION	5,710	494,076	6,566	748,466	6,111	621,674	5,887	538,072
IMMIGRATION AND NATURALIZATION SERVICE	15,453	741,114	16,165	967,074	15,583	921,660	15,443	859,276

APPROPRIATION	1988 APPROPRIATION		1989 ORGANIZATIONS REQUEST TO THE DEPARTMENT		1989 DEPARTMENT REQUEST TO OMB		1989 REQUEST TO CONGRESS	
	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT
FEDERAL PRISON SYSTEM:								
SALARIES AND EXPENSES	11,760	719,814	13,609	902,311	13,653	905,212	15,258	933,709
NATIONAL INSTITUTE OF CORRECTIONS	41	9,590	41	12,366	41	12,548	41	9,821
BUILDINGS AND FACILITIES	129	201,676	229	576,335	224	601,736	191	436,554
FEDERAL PRISON INDUSTRIES	...	...	...	...	...	...	...	...
COMMISSARY FUND	...	...	...	...	...	...	...	...
TOTAL, FEDERAL PRISON SYSTEM	11,930	931,080	13,879	1,491,012	13,918	1,519,496	15,490	1,380,084
OFFICE OF JUSTICE PROGRAMS:								
NATIONAL INSTITUTE OF JUSTICE	...	19,144	...	26,811	...	21,605	...	21,605
BUREAU OF JUSTICE STATISTICS	...	19,278	...	23,145	...	20,636	...	20,636
STATE AND LOCAL ASSISTANCE	...	5,000	...	...	...	...	...	...
STATE AND LOCAL DRUG GRANTS	...	69,500	...	...	...	158,000	...	...
EMERGENCY ASSISTANCE	...	...	...	1,200	...	1,200	...	1,200
OJJDP	...	63,800	...	...	...	...	...	...
MISSING CHILDREN	...	4,000	...	4,000	...	4,000	...	4,000
PSOB	...	9,275	...	10,000	...	10,000	...	10,000
MARIEL CUBANS	...	5,000	...	...	...	66,350	...	...
RISS GRANTS	...	12,000	...	...	...	...	...	...
MANAGEMENT AND ADMINISTRATION	329	22,078	329	20,756	276	20,945	318	20,576
EXEC. DIR.,NIJ	[52]	[3,265]	[52]	[3,265]	[52]	[3,358]	[52]	[3,333]
EXEC. DIR.,BJS	[46]	[2,872]	[46]	[2,872]	[51]	[3,175]	[51]	[2,932]
EXEC. DIR.,OJJDP	[62]	[2,892]	[62]	[2,892]	[24]	[1,808]	[46]	[1,800]
EXEC. DIR.,BJA	[48]	[2,360]	[48]	[2,360]	[28]	[1,485]	[28]	[1,492]
EXEC. DIR.,OVC	[28]	[1,421]	[28]	[1,421]	[28]	[1,456]	[28]	[1,457]
EXEC. DIR.,OJP	[93]	[9,268]	[93]	[9,268]	[93]	[9,663]	[93]	[9,562]
TOTAL, OFFICE OF JUSTICE PROGRAMS	329	229,075	281	85,912	276	302,736	318	78,017
SUB-TOTAL: DIRECT AUTHORITY, DEPARTMENT OF JUSTICE	70,842	4,921,004	79,560	6,737,306	77,031	6,483,781	75,100	5,625,779
U.S. TRUSTEES (non-appropriated)	...	18,000	...	60,152	...	59,085	...	59,493
Appropriated	[893]	[29,370]	893	[...]	[...]	[...]	[...]	[...]
TOTAL	...	18,000	893	60,152	...	59,085	...	59,493
ASSETS FORFEITURE FUND	...	140,000	...	266,000	...	200,000	...	200,000
INS USER FEES	...	75,000	...	75,000	...	75,000	...	75,057
IMMIGRATION LEGALIZATION	...	143,650	...	88,633	...	88,633	...	89,786
FPI BORROWING AUTHORITY	...	...	...	...	...	20,000	...	20,000
CRIME VICTIMS FUND	...	85,000	...	75,000	...	85,000	...	85,000
TOTAL: NEW AUTHORITY, DEPARTMENT OF JUSTICE	70,842	5,382,654	80,453	7,302,091	77,031	7,011,499	75,100	6,155,115

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 18, 1988

Senator Ernest F. Hollings
Chairman, Subcommittee on the Departments
  of Commerce, Justice, and State, the
  Judiciary, and Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Senator Hollings:

This is to respond to your March 3, 1988 request to the Attorney General for a complete history of the Department of Justice's FY 1989 budget estimates. Your request specified that we should provide the requests of the agencies to the Department, the Department's request to the Office of Management and Budget, and the amounts requested in the President's budget.

As you know, the 1989 requests received in the Department and sent to the Office of Management and Budget were submitted months before the Congress acted on the 1988 budget. Adjustments were made late in the process because of the need to generate a revised 1989 budget base in line with final Congressional action on our 1988 appropriations. It should also be noted that the requests prepared by individual organizations do not necessarily address the problem of integrating the various administration of justice functions into a well balanced package. Furthermore, neither the Departmental components nor the Department itself are in a position to address the overall budget priorities of the Administration or the problem of meeting the deficit reduction targets required by the November 20, 1987 Budget Summit agreement.

Sincerely,

Thomas M. Boyd
Acting Assistant Attorney General

Enclosure

DEPARTMENT OF JUSTICE
APPROPRIATION HISTORY 1989
(DOLLARS IN THOUSANDS)

APPROPRIATION	1988 APPROPRIATION		1989 ORGANIZATIONS REQUEST TO THE DEPARTMENT		1989 DEPARTMENT REQUEST TO OMB		1989 REQUEST TO CONGRESS	
	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT
GENERAL ADMINISTRATION:								
DEPARTMENT LEADERSHIP	56	5,823	68	8,041	68	8,150	56	6,003
EXECUTIVE SUPPORT	71	6,760	97	8,588	94	8,558	71	7,037
OFFICE OF INTELLIGENCE POLICY & PROFESSIONAL RESPONSIBILITY	22	1,973	26	2,198	26	2,231	22	2,029
JUSTICE MANAGEMENT DIVISION	590	43,312	669	56,756	680	57,441	589	48,246
ADMINISTRATIVE REVIEW AND APPEALS	477	30,492	710	55,449	640	45,151	583	37,487
TOTAL, GENERAL ADMINISTRATION	1,216	88,360	1,570	131,032	1,508	121,531	1,321	100,802
WORKING CAPITAL FUND	...	...	...	...	...	...	...	...
U.S. PAROLE COMMISSION	179	11,665	179	12,865	161	11,539	161	10,893
GENERAL LEGAL ACTIVITIES:								
SOLICITOR GENERAL	49	4,140	49	4,475	49	4,470	49	4,232
TAX DIVISION	621	36,859	854	59,320	691	50,474	621	38,593
CRIMINAL DIVISION	769	50,508	881	63,061	833	59,196	794	52,819
CIVIL DIVISION	881	83,534	1,082	119,799	1,049	111,564	881	92,925
LAND AND NATURAL RESOURCES DIVISION	349	26,194	427	39,127	427	39,567	388	32,178
OFFICE OF LEGAL COUNSEL	35	2,564	38	2,988	38	2,814	38	2,721
CIVIL RIGHTS DIVISION	400	25,263	420	28,945	418	28,552	409	26,041
INTERPOL	44	3,513	95	6,727	78	6,096	52	4,616
INDEPENDENT COUNSEL	...	1,000	...	...	...	...	...	...
LEGAL ACTIVITIES OFFICE AUTOMATION	...	2,590	...	31,323	...	30,754	...	13,266
SPECIAL COUNSEL	30	2,044	60	4,607	60	4,458	37	2,795
TOTAL, GENERAL LEGAL ACTIVITIES	3,178	238,209	3,906	360,372	3,643	337,945	3,269	270,186
INDEPENDENT COUNSEL	...	7,000	...	5,000	...	...	...	7,000
ANTITRUST DIVISION	549	44,937	565	47,466	549	46,375	549	47,021
FOREIGN CLAIMS SETTLEMENT COMMISSION	9	500	9	524	7	480	7	472
U.S. ATTORNEYS	5,958	380,339	7,398	460,645	7,133	463,745	6,524	424,418
U.S. MARSHALS	2,864	183,168	3,392	305,616	3,187	234,631	3,025	207,582
SUPPORT OF U.S. PRISONERS	...	73,746	...	116,186	...	121,063	...	118,265
FEES AND EXPENSES OF WITNESSES	...	52,015	...	44,323	...	59,479	...	51,569
COMMUNITY RELATIONS SERVICE	118	27,858	136	35,112	123	31,763	118	28,815
U.S. TRUSTEES SYSTEM FUND	893	29,370	...	...	...	...	...	...
FEDERAL BUREAU OF INVESTIGATION	22,456	1,388,492	25,514	1,925,701	24,832	1,689,664	22,988	1,503,307
DRUG ENFORCEMENT ADMINISTRATION	5,710	494,076	6,566	748,466	6,111	621,674	5,887	538,072
IMMIGRATION AND NATURALIZATION SERVICE	15,453	741,114	16,165	967,074	15,583	921,660	15,443	859,276

APPROPRIATION	1988 APPROPRIATION		1989 ORGANIZATIONS REQUEST TO THE DEPARTMENT		1989 DEPARTMENT REQUEST TO OMB		1989 REQUEST TO CONGRESS	
	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT
FEDERAL PRISON SYSTEM:								
SALARIES AND EXPENSES	11,760	719,814	13,609	902,311	13,653	905,212	15,258	933,709
NATIONAL INSTITUTE OF CORRECTIONS	41	9,590	41	12,366	41	12,548	41	9,821
BUILDINGS AND FACILITIES	129	201,676	229	576,335	224	601,736	191	436,554
FEDERAL PRISON INDUSTRIES	...	...	...	...	...	...	...	...
COMMISSARY FUND	...	...	...	...	...	...	...	...
TOTAL, FEDERAL PRISON SYSTEM	11,930	931,080	13,879	1,491,012	13,918	1,519,496	15,490	1,380,084
OFFICE OF JUSTICE PROGRAMS:								
NATIONAL INSTITUTE OF JUSTICE	...	19,144	...	26,811	...	21,605	...	21,605
BUREAU OF JUSTICE STATISTICS	...	19,278	...	23,145	...	20,636	...	20,636
STATE AND LOCAL ASSISTANCE	...	5,000	...	...	...	...	...	...
STATE AND LOCAL DRUG GRANTS	...	69,500	...	...	...	158,000	...	...
EMERGENCY ASSISTANCE	...	...	...	1,200	...	1,200	...	1,200
OJJDP	...	63,800	...	...	...	...	...	...
MISSING CHILDREN	...	4,000	...	4,000	...	4,000	...	4,000
PSOB	...	9,275	...	10,000	...	10,000	...	10,000
MARIEL CUBANS	...	5,000	...	...	...	66,350	...	...
RISS GRANTS	...	12,000	...	...	...	...	...	...
MANAGEMENT AND ADMINISTRATION	329	22,078	329	20,756	276	20,945	318	20,576
EXEC. DIR.,NIJ	[52]	[3,265]	[52]	[3,265]	[52]	[3,358]	[52]	[3,333]
EXEC. DIR.,BJS	[46]	[2,872]	[46]	[2,872]	[51]	[3,175]	[51]	[2,932]
EXEC. DIR.,OJJDP	[62]	[2,892]	[62]	[2,892]	[24]	[1,808]	[46]	[1,800]
EXEC. DIR.,BJA	[48]	[2,360]	[48]	[2,360]	[28]	[1,485]	[28]	[1,492]
EXEC. DIR.,OVC	[28]	[1,421]	[28]	[1,421]	[28]	[1,456]	[28]	[1,457]
EXEC. DIR.,OJP	[93]	[9,268]	[93]	[9,268]	[93]	[9,663]	[93]	[9,562]
TOTAL, OFFICE OF JUSTICE PROGRAMS	329	229,075	281	85,912	276	302,736	318	78,017
SUB-TOTAL: DIRECT AUTHORITY, DEPARTMENT OF JUSTICE	70,842	4,921,004	79,560	6,737,306	77,031	6,483,781	75,100	5,625,779
U.S. TRUSTEES (non-appropriated)	...	18,000	...	60,152	...	59,085	...	59,493
Appropriated	[893]	[29,370]	893	[...]	[...]	[...]	[...]	[...]
TOTAL	...	18,000	893	60,152	...	59,085	...	59,493
ASSETS FORFEITURE FUND	...	140,000	...	266,000	...	200,000	...	200,000
INS USER FEES	...	75,000	...	75,000	...	75,000	...	75,057
IMMIGRATION LEGALIZATION	...	143,650	...	88,633	...	88,633	...	89,786
FPI BORROWING AUTHORITY	...	...	...	...	...	20,000	...	20,000
CRIME VICTIMS FUND	...	85,000	...	75,000	...	85,000	...	85,000
TOTAL: NEW AUTHORITY, DEPARTMENT OF JUSTICE	70,842	5,382,654	80,453	7,302,091	77,031	7,011,499	75,100	6,155,115

APPROPRIATION	1988 APPROPRIATION		1989 ORGANIZATIONS REQUEST TO THE DEPARTMENT		1989 DEPARTMENT REQUEST TO OMB		1989 REQUEST TO CONGRESS	
	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT
GENERAL ADMINISTRATION:								
DEPARTMENT LEADERSHIP	56	5,823	68	8,041	68	8,150	56	6,003
EXECUTIVE SUPPORT	71	6,760	97	8,588	94	8,558	71	7,037
OFFICE OF INTELLIGENCE POLICY & PROFESSIONAL RESPONSIBILITY	22	1,973	26	2,198	26	2,231	22	2,029
JUSTICE MANAGEMENT DIVISION	590	43,312	669	56,756	680	57,441	589	48,246
ADMINISTRATIVE REVIEW AND APPEALS	477	30,492	710	55,449	640	45,151	583	37,487
TOTAL, GENERAL ADMINISTRATION	1,216	88,360	1,570	131,032	1,508	121,531	1,321	100,802
WORKING CAPITAL FUND	...	...	...	...	...	...	...	...
U.S. PAROLE COMMISSION	179	11,665	179	12,865	161	11,539	161	10,893
GENERAL LEGAL ACTIVITIES:								
SOLICITOR GENERAL	49	4,140	49	4,475	49	4,470	49	4,232
TAX DIVISION	621	36,859	854	59,320	691	50,474	621	38,593
CRIMINAL DIVISION	769	50,508	881	63,061	833	59,196	794	52,819
CIVIL DIVISION	881	83,534	1,082	119,799	1,049	111,564	881	92,925
LAND AND NATURAL RESOURCES DIVISION	349	26,194	427	39,127	427	39,567	388	32,178
OFFICE OF LEGAL COUNSEL	35	2,564	38	2,988	38	2,814	38	2,721
CIVIL RIGHTS DIVISION	400	25,263	420	28,945	418	28,552	409	26,041
INTERPOL	44	3,513	95	6,727	78	6,096	52	4,616
INDEPENDENT COUNSEL	...	1,000	...	...	...	...	...	...
LEGAL ACTIVITIES OFFICE AUTOMATION	...	2,590	...	31,323	...	30,754	...	13,266
SPECIAL COUNSEL	30	2,044	60	4,607	60	4,458	37	2,795
TOTAL, GENERAL LEGAL ACTIVITIES	3,178	238,209	3,906	360,372	3,643	337,945	3,269	270,186
INDEPENDENT COUNSEL	...	7,000	...	5,000	...	...	...	7,000
ANTITRUST DIVISION	549	44,937	565	47,466	549	46,375	549	47,021
FOREIGN CLAIMS SETTLEMENT COMMISSION	9	500	9	524	7	480	7	472
U.S. ATTORNEYS	5,958	380,339	7,398	460,645	7,133	463,745	6,524	424,418
U.S. MARSHALS	2,864	183,168	3,392	305,616	3,187	234,631	3,025	207,582
SUPPORT OF U.S. PRISONERS	...	73,746	...	116,186	...	121,063	...	118,265
FEES AND EXPENSES OF WITNESSES	...	52,015	...	44,323	...	59,479	...	51,569
COMMUNITY RELATIONS SERVICE	118	27,858	136	35,112	123	31,763	118	28,815
U.S. TRUSTEES SYSTEM FUND	893	29,370	...	...	...	...	...	...
FEDERAL BUREAU OF INVESTIGATION	22,456	1,388,492	25,514	1,925,701	24,832	1,689,664	22,988	1,503,307
DRUG ENFORCEMENT ADMINISTRATION	5,710	494,076	6,566	748,466	6,111	621,674	5,887	538,072
IMMIGRATION AND NATURALIZATION SERVICE	15,453	741,114	16,165	967,074	15,583	921,660	15,443	859,276

APPROPRIATION	1988 APPROPRIATION		1989 ORGANIZATIONS REQUEST TO THE DEPARTMENT		1989 DEPARTMENT REQUEST TO OMB		1989 REQUEST TO CONGRESS	
	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT
FEDERAL PRISON SYSTEM:								
SALARIES AND EXPENSES	11,760	719,814	13,609	902,311	13,653	905,212	15,258	933,709
NATIONAL INSTITUTE OF CORRECTIONS	41	9,590	41	12,366	41	12,548	41	9,821
BUILDINGS AND FACILITIES	129	201,676	229	576,335	224	601,736	191	436,554
FEDERAL PRISON INDUSTRIES	...	...	...	...	...	...	...	...
COMMISSARY FUND	...	...	...	...	...	...	...	...
TOTAL, FEDERAL PRISON SYSTEM	11,930	931,080	13,879	1,491,012	13,918	1,519,496	15,490	1,380,084
OFFICE OF JUSTICE PROGRAMS:								
NATIONAL INSTITUTE OF JUSTICE	...	19,144	...	26,811	...	21,605	...	21,605
BUREAU OF JUSTICE STATISTICS	...	19,278	...	23,145	...	20,636	...	20,636
STATE AND LOCAL ASSISTANCE	...	5,000	...	...	...	...	...	...
STATE AND LOCAL DRUG GRANTS	...	69,500	...	...	...	158,000	...	...
EMERGENCY ASSISTANCE	...	...	...	1,200	...	1,200	...	1,200
OJJDP	...	63,800	...	...	...	...	...	...
MISSING CHILDREN	...	4,000	...	4,000	...	4,000	...	4,000
PSOB	...	9,275	...	10,000	...	10,000	...	10,000
MARIEL CUBANS	...	5,000	...	...	...	66,350	...	...
RISS GRANTS	...	12,000	...	...	...	...	...	...
MANAGEMENT AND ADMINISTRATION	329	22,078	329	20,756	276	20,945	318	20,576
EXEC. DIR.,NIJ	[52]	[3,265]	[52]	[3,265]	[52]	[3,358]	[52]	[3,333]
EXEC. DIR.,BJS	[46]	[2,872]	[46]	[2,872]	[51]	[3,175]	[51]	[2,932]
EXEC. DIR.,OJJDP	[62]	[2,892]	[62]	[2,892]	[24]	[1,808]	[46]	[1,800]
EXEC. DIR.,BJA	[48]	[2,360]	[48]	[2,360]	[28]	[1,485]	[28]	[1,492]
EXEC. DIR.,OVC	[28]	[1,421]	[28]	[1,421]	[28]	[1,456]	[28]	[1,457]
EXEC. DIR.,OJP	[93]	[9,268]	[93]	[9,268]	[93]	[9,663]	[93]	[9,562]
TOTAL, OFFICE OF JUSTICE PROGRAMS	329	229,075	281	85,912	276	302,736	318	78,017
SUB-TOTAL: DIRECT AUTHORITY, DEPARTMENT OF JUSTICE	70,842	4,921,004	79,560	6,737,306	77,031	6,483,781	75,100	5,625,779
U.S. TRUSTEES (non-appropriated)	...	18,000	...	60,152	...	59,085	...	59,493
Appropriated	[893]	[29,370]	893	[...]	[...]	[...]	[...]	[...]
TOTAL	...	18,000	893	60,152	...	59,085	...	59,493
ASSETS FORFEITURE FUND	...	140,000	...	266,000	...	200,000	...	200,000
INS USER FEES	...	75,000	...	75,000	...	75,000	...	75,057
IMMIGRATION LEGALIZATION	...	143,650	...	88,633	...	88,633	...	89,786
FPI BORROWING AUTHORITY	...	...	...	...	...	20,000	...	20,000
CRIME VICTIMS FUND	...	85,000	...	75,000	...	85,000	...	85,000
TOTAL: NEW AUTHORITY, DEPARTMENT OF JUSTICE	70,842	5,382,654	80,453	7,302,091	77,031	7,011,499	75,100	6,155,115

APPROPRIATION	1988 APPROPRIATION		1989 ORGANIZATIONS REQUEST TO THE DEPARTMENT		1989 DEPARTMENT REQUEST TO OMB		1989 REQUEST TO CONGRESS	
	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT
GENERAL ADMINISTRATION:								
DEPARTMENT LEADERSHIP	56	5,823	68	8,041	68	8,150	56	6,003
EXECUTIVE SUPPORT	71	6,760	97	8,588	94	8,558	71	7,037
OFFICE OF INTELLIGENCE POLICY & PROFESSIONAL RESPONSIBILITY	22	1,973	26	2,198	26	2,231	22	2,029
JUSTICE MANAGEMENT DIVISION	590	43,312	669	56,756	680	57,441	589	48,246
ADMINISTRATIVE REVIEW AND APPEALS	477	30,492	710	55,449	640	45,151	583	37,487
TOTAL, GENERAL ADMINISTRATION	1,216	88,360	1,570	131,032	1,508	121,531	1,321	100,802
WORKING CAPITAL FUND	...	...	...	...	...	...	...	...
U.S. PAROLE COMMISSION	179	11,665	179	12,865	161	11,539	161	10,893
GENERAL LEGAL ACTIVITIES:								
SOLICITOR GENERAL	49	4,140	49	4,475	49	4,470	49	4,232
TAX DIVISION	621	36,859	854	59,320	691	50,474	621	38,593
CRIMINAL DIVISION	769	50,508	881	63,061	833	59,196	794	52,819
CIVIL DIVISION	881	83,534	1,082	119,799	1,049	111,564	881	92,925
LAND AND NATURAL RESOURCES DIVISION	349	26,194	427	39,127	427	39,567	388	32,178
OFFICE OF LEGAL COUNSEL	35	2,564	38	2,988	38	2,814	38	2,721
CIVIL RIGHTS DIVISION	400	25,263	420	28,945	418	28,552	409	26,041
INTERPOL	44	3,513	95	6,727	78	6,096	52	4,616
INDEPENDENT COUNSEL	...	1,000	...	...	...	...	...	...
LEGAL ACTIVITIES OFFICE AUTOMATION	...	2,590	...	31,323	...	30,754	...	13,266
SPECIAL COUNSEL	30	2,044	60	4,607	60	4,458	37	2,795
TOTAL, GENERAL LEGAL ACTIVITIES	3,178	238,209	3,906	360,372	3,643	337,945	3,269	270,186
INDEPENDENT COUNSEL	...	7,000	...	5,000	...	...	...	7,000
ANTITRUST DIVISION	549	44,937	565	47,466	549	46,375	549	47,021
FOREIGN CLAIMS SETTLEMENT COMMISSION	9	500	9	524	7	480	7	472
U.S. ATTORNEYS	5,958	380,339	7,398	460,645	7,133	463,745	6,524	424,418
U.S. MARSHALS	2,864	183,168	3,392	305,616	3,187	234,631	3,025	207,582
SUPPORT OF U.S. PRISONERS	...	73,746	...	116,186	...	121,063	...	118,265
FEES AND EXPENSES OF WITNESSES	...	52,015	...	44,323	...	59,479	...	51,569
COMMUNITY RELATIONS SERVICE	118	27,858	136	35,112	123	31,763	118	28,815
U.S. TRUSTEES SYSTEM FUND	893	29,370	...	...	...	...	...	...
FEDERAL BUREAU OF INVESTIGATION	22,456	1,388,492	25,514	1,925,701	24,832	1,689,664	22,988	1,503,307
DRUG ENFORCEMENT ADMINISTRATION	5,710	494,076	6,566	748,466	6,111	621,674	5,887	538,072
IMMIGRATION AND NATURALIZATION SERVICE	15,453	741,114	16,165	967,074	15,583	921,660	15,443	859,276

APPROPRIATION	1988 APPROPRIATION		1989 ORGANIZATIONS REQUEST TO THE DEPARTMENT		1989 DEPARTMENT REQUEST TO OMB		1989 REQUEST TO CONGRESS	
	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT
FEDERAL PRISON SYSTEM:								
SALARIES AND EXPENSES	11,760	719,814	13,609	902,311	13,653	905,212	15,258	933,709
NATIONAL INSTITUTE OF CORRECTIONS	41	9,590	41	12,366	41	12,548	41	9,821
BUILDINGS AND FACILITIES	129	201,676	229	576,335	224	601,736	191	436,554
FEDERAL PRISON INDUSTRIES	...	...	...	...	...	...	...	...
COMMISSARY FUND	...	...	...	...	...	...	...	...
TOTAL, FEDERAL PRISON SYSTEM	11,930	931,080	13,879	1,491,012	13,918	1,519,496	15,490	1,380,084
OFFICE OF JUSTICE PROGRAMS:								
NATIONAL INSTITUTE OF JUSTICE	...	19,144	...	26,811	...	21,605	...	21,605
BUREAU OF JUSTICE STATISTICS	...	19,278	...	23,145	...	20,636	...	20,636
STATE AND LOCAL ASSISTANCE	...	5,000	...	...	...	...	...	...
STATE AND LOCAL DRUG GRANTS	...	69,500	...	...	...	158,000	...	...
EMERGENCY ASSISTANCE	...	...	...	1,200	...	1,200	...	1,200
OJJDP	...	63,800	...	...	...	...	...	...
MISSING CHILDREN	...	4,000	...	4,000	...	4,000	...	4,000
PSOB	...	9,275	...	10,000	...	10,000	...	10,000
MARIEL CUBANS	...	5,000	...	...	...	66,350	...	...
RISS GRANTS	...	12,000	...	...	...	...	...	...
MANAGEMENT AND ADMINISTRATION	329	22,078	329	20,756	276	20,945	318	20,576
EXEC. DIR.,NIJ	[52]	[3,265]	[52]	[3,265]	[52]	[3,358]	[52]	[3,333]
EXEC. DIR.,BJS	[46]	[2,872]	[46]	[2,872]	[51]	[3,175]	[51]	[2,932]
EXEC. DIR.,OJJDP	[62]	[2,892]	[62]	[2,892]	[24]	[1,808]	[46]	[1,800]
EXEC. DIR.,BJA	[48]	[2,360]	[48]	[2,360]	[28]	[1,485]	[28]	[1,492]
EXEC. DIR.,OVC	[28]	[1,421]	[28]	[1,421]	[28]	[1,456]	[28]	[1,457]
EXEC. DIR.,OJP	[93]	[9,268]	[93]	[9,268]	[93]	[9,663]	[93]	[9,562]
TOTAL, OFFICE OF JUSTICE PROGRAMS	329	229,075	281	85,912	276	302,736	318	78,017
SUB-TOTAL: DIRECT AUTHORITY, DEPARTMENT OF JUSTICE	70,842	4,921,004	79,560	6,737,306	77,031	6,483,781	75,100	5,625,779
U.S. TRUSTEES (non-appropriated)	...	18,000	...	60,152	...	59,085	...	59,493
Appropriated	[893]	[29,370]	893	[...]	[...]	[...]	[...]	[...]
TOTAL	...	18,000	893	60,152	...	59,085	...	59,493
ASSETS FORFEITURE FUND	...	140,000	...	266,000	...	200,000	...	200,000
INS USER FEES	...	75,000	...	75,000	...	75,000	...	75,057
IMMIGRATION LEGALIZATION	...	143,650	...	88,633	...	88,633	...	89,786
FPI BORROWING AUTHORITY	...	...	...	...	...	20,000	...	20,000
CRIME VICTIMS FUND	...	85,000	...	75,000	...	85,000	...	85,000
TOTAL: NEW AUTHORITY, DEPARTMENT OF JUSTICE	70,842	5,382,654	80,453	7,302,091	77,031	7,011,499	75,100	6,155,115

APPROPRIATION	1988 APPROPRIATION		1989 ORGANIZATIONS REQUEST TO THE DEPARTMENT		1989 DEPARTMENT REQUEST TO OMB		1989 REQUEST TO CONGRESS	
	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT
GENERAL ADMINISTRATION:								
DEPARTMENT LEADERSHIP	56	5,823	68	8,041	68	8,150	56	6,003
EXECUTIVE SUPPORT	71	6,760	97	8,588	94	8,558	71	7,037
OFFICE OF INTELLIGENCE POLICY & PROFESSIONAL RESPONSIBILITY	22	1,973	26	2,198	26	2,231	22	2,029
JUSTICE MANAGEMENT DIVISION	590	43,312	669	56,756	680	57,441	589	48,246
ADMINISTRATIVE REVIEW AND APPEALS	477	30,492	710	55,449	640	45,151	583	37,487
TOTAL, GENERAL ADMINISTRATION	1,216	88,360	1,570	131,032	1,508	121,531	1,321	100,802
WORKING CAPITAL FUND	...	...	...	...	...	...	...	...
U.S. PAROLE COMMISSION	179	11,665	179	12,865	161	11,539	161	10,893
GENERAL LEGAL ACTIVITIES:								
SOLICITOR GENERAL	49	4,140	49	4,475	49	4,470	49	4,232
TAX DIVISION	621	36,859	854	59,320	691	50,474	621	38,593
CRIMINAL DIVISION	769	50,508	881	63,061	833	59,196	794	52,819
CIVIL DIVISION	881	83,534	1,082	119,799	1,049	111,564	881	92,925
LAND AND NATURAL RESOURCES DIVISION	349	26,194	427	39,127	427	39,567	388	32,178
OFFICE OF LEGAL COUNSEL	35	2,564	38	2,988	38	2,814	38	2,721
CIVIL RIGHTS DIVISION	400	25,263	420	28,945	418	28,552	409	26,041
INTERPOL	44	3,513	95	6,727	78	6,096	52	4,616
INDEPENDENT COUNSEL	...	1,000	...	...	...	...	...	...
LEGAL ACTIVITIES OFFICE AUTOMATION	...	2,590	...	31,323	...	30,754	...	13,266
SPECIAL COUNSEL	30	2,044	60	4,607	60	4,458	37	2,795
TOTAL, GENERAL LEGAL ACTIVITIES	3,178	238,209	3,906	360,372	3,643	337,945	3,269	270,186
INDEPENDENT COUNSEL	...	7,000	...	5,000	...	...	...	7,000
ANTITRUST DIVISION	549	44,937	565	47,466	549	46,375	549	47,021
FOREIGN CLAIMS SETTLEMENT COMMISSION	9	500	9	524	7	480	7	472
U.S. ATTORNEYS	5,958	380,339	7,398	460,645	7,133	463,745	6,524	424,418
U.S. MARSHALS	2,864	183,168	3,392	305,616	3,187	234,631	3,025	207,582
SUPPORT OF U.S. PRISONERS	...	73,746	...	116,186	...	121,063	...	118,265
FEES AND EXPENSES OF WITNESSES	...	52,015	...	44,323	...	59,479	...	51,569
COMMUNITY RELATIONS SERVICE	118	27,858	136	35,112	123	31,763	118	28,815
U.S. TRUSTEES SYSTEM FUND	893	29,370	...	...	...	...	...	...
FEDERAL BUREAU OF INVESTIGATION	22,456	1,388,492	25,514	1,925,701	24,832	1,689,664	22,988	1,503,307
DRUG ENFORCEMENT ADMINISTRATION	5,710	494,076	6,566	748,466	6,111	621,674	5,887	538,072
IMMIGRATION AND NATURALIZATION SERVICE	15,453	741,114	16,165	967,074	15,583	921,660	15,443	859,276

APPROPRIATION	1988 APPROPRIATION		1989 ORGANIZATIONS REQUEST TO THE DEPARTMENT		1989 DEPARTMENT REQUEST TO OMB		1989 REQUEST TO CONGRESS	
	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT	POS.	AMOUNT
FEDERAL PRISON SYSTEM:								
SALARIES AND EXPENSES	11,760	719,814	13,609	902,311	13,653	905,212	15,258	933,709
NATIONAL INSTITUTE OF CORRECTIONS	41	9,590	41	12,366	41	12,548	41	9,821
BUILDINGS AND FACILITIES	129	201,676	229	576,335	224	601,736	191	436,554
FEDERAL PRISON INDUSTRIES	...	...	...	...	...	...	...	...
COMMISSARY FUND	...	...	...	...	...	...	...	...
TOTAL, FEDERAL PRISON SYSTEM	11,930	931,080	13,879	1,491,012	13,918	1,519,496	15,490	1,380,084
OFFICE OF JUSTICE PROGRAMS:								
NATIONAL INSTITUTE OF JUSTICE	...	19,144	...	26,811	...	21,605	...	21,605
BUREAU OF JUSTICE STATISTICS	...	19,278	...	23,145	...	20,636	...	20,636
STATE AND LOCAL ASSISTANCE	...	5,000	...	...	...	...	...	...
STATE AND LOCAL DRUG GRANTS	...	69,500	...	...	...	158,000	...	...
EMERGENCY ASSISTANCE	...	...	...	1,200	...	1,200	...	1,200
OJJDP	...	63,800	...	...	...	...	...	...
MISSING CHILDREN	...	4,000	...	4,000	...	4,000	...	4,000
PSOB	...	9,275	...	10,000	...	10,000	...	10,000
MARIEL CUBANS	...	5,000	...	...	...	66,350	...	...
RISS GRANTS	...	12,000	...	...	...	...	...	...
MANAGEMENT AND ADMINISTRATION	329	22,078	329	20,756	276	20,945	318	20,576
EXEC. DIR.,NIJ	[52]	[3,265]	[52]	[3,265]	[52]	[3,358]	[52]	[3,333]
EXEC. DIR.,BJS	[46]	[2,872]	[46]	[2,872]	[51]	[3,175]	[51]	[2,932]
EXEC. DIR.,OJJDP	[62]	[2,892]	[62]	[2,892]	[24]	[1,808]	[46]	[1,800]
EXEC. DIR.,BJA	[48]	[2,360]	[48]	[2,360]	[28]	[1,485]	[28]	[1,492]
EXEC. DIR.,OVC	[28]	[1,421]	[28]	[1,421]	[28]	[1,456]	[28]	[1,457]
EXEC. DIR.,OJP	[93]	[9,268]	[93]	[9,268]	[93]	[9,663]	[93]	[9,562]
TOTAL, OFFICE OF JUSTICE PROGRAMS	329	229,075	281	85,912	276	302,736	318	78,017
SUB-TOTAL: DIRECT AUTHORITY, DEPARTMENT OF JUSTICE	70,842	4,921,004	79,560	6,737,306	77,031	6,483,781	75,100	5,625,779
U.S. TRUSTEES (non-appropriated)	...	18,000	...	60,152	...	59,085	...	59,493
Appropriated	[893]	[29,370]	893	[...]	[...]	[...]	[...]	[...]
TOTAL	...	18,000	893	60,152	...	59,085	...	59,493
ASSETS FORFEITURE FUND	...	140,000	...	266,000	...	200,000	...	200,000
INS USER FEES	...	75,000	...	75,000	...	75,000	...	75,057
IMMIGRATION LEGALIZATION	...	143,650	...	88,633	...	88,633	...	89,786
FPI BORROWING AUTHORITY	...	...	...	...	...	20,000	...	20,000
CRIME VICTIMS FUND	...	85,000	...	75,000	...	85,000	...	85,000
TOTAL: NEW AUTHORITY, DEPARTMENT OF JUSTICE	70,842	5,382,654	80,453	7,302,091	77,031	7,011,499	75,100	6,155,115

Senator HOLLINGS. We would appreciate it because there is no request, and we would certainly look with favor on that reprogramming.

Quickly then, I have here a memo of understanding, dated just last month, between the Attorney General and GSA with respect to the Washington Field Office for the FBI.

We appropriated $10 million in 1984. You say in the memorandum that it is the most important thing. You and I know how important it is because of our foreign counter-intelligence efforts, yet, when we appropriated monies back in 1984 and again, and again, you have distributed the money otherwise. Then just before you come up, you sign a memo saying that it is the most important thing, but you have distributed around to community relations and everything else the $10 million that we appropriated. What gives there?

Mr. MEESE. Mr. Chairman, the money was reprogrammed for other uses because it could not be used for this purpose during the particular years for which it was appropriated. The reason is that a variety of things, including a reorganization of the Washington Metropolitan Field Division, and objections by the local community to the sites that had been selected, have interferred with our proceeding as rapidly as we would have liked.

It is our plan to acquire and provide that facility as soon as possible, but this was a matter of using monies when they were available.

I would suggest that the Director of the FBI could answer this question in more detail, because he is more up to date on the specific plans and where we go from here. But, that is my knowledge of the situation.

[The information follows:]

CLARIFICATION OF FUNDING FOR MOVING FEDERAL BUREAU OF INVESTIGATION'S [FBI] WASHINGTON FIELD OFFICE

In the Department of Justice Appropriation Act, 1984 (Public Law 98-166, November 28, 1983), the Congress appropriated $10,000,000 for relocation within the District of Columbia of the FBI Washington Field Office. These funds were to remain available until September 30, 1985. No funds were ever obligated from this legislative earmarking because no site had been obtained by the General Services Administration. On August 15, 1985, the $10,000,000 earmarked for the FBI Washington Field Office relocation was extended to be available until September 30, 1986 (Public Law 99-88, Supplemental Appropriations Act, 1985). When it became apparent that no relocation would occur within the legislative timetable, the $10,000,000 appropriated in Public Law 99-88 was rescinded and replaced by a supplemental appropriation of the same amount that would remain available until expended (Public Law 99-349, July 2, 1986, Urgent Supplemental Appropriation Act, 1986). In late 1986, a suitable building was located; however, the cost of per square footage exceeded the $35.00/square foot limit imposed by the Public Buildings and Grounds Subcommittee of the House Public Works and Transportation Committee. Finally, the Administration proposed that the funds be transferred for other purposes in 1988 when the FBI still had not located a site that was fully satisfactory (H. Doc. 100-176). Because the funds for relocation were legislatively isolated from funds otherwise available to the FBI, they could not be reprogrammed and necessarily remained unobligated from the time when they were initially appropriated.

Senator HOLLINGS. We will have Judge Sessions and your other colleagues up momentarily. Let me yield to my Ranking Member and former Chairman, Senator Rudman.

Senator RUDMAN. Mr. Chairman, thank you very much.

Good morning, Mr. Attorney General. It is always good to have you before the committee.

Mr. Attorney General, I thought long and hard before deciding to ask you the question I am about to ask you, but I think that you and I both share in the belief that a government and this country is under assault and suspicion by many, much of the time without justification.

But, there has been a great deal of controversy associated with your stewardship of the Justice Department, very little of it to do with your capacity to govern the Justice Department, much of it to do with collateral events.

As you know, I have stated publicly on numerous occasions that I thought it was extraordinarily unfair to accuse you of dishonesty, of self-dealing, and have defended you in that event, although taking great issue with other things that you have done, which is, of course, my right, and your right to disagree.

Having said all that, I want to ask you this question to the extent that it might be helpful to future men or women who hold the position that you hold, one which I deeply respect, having held that position in my State.

You are the Nation's chief law enforcement officer, one whom everyone looks to for enforcing the rule of law in this country. As you look back at some of the events, and sometimes God save us from our friends; as you look back at the WEDTEC case, the involvement of Mr. Wallach with the pipeline, a letter to a judge concerning a case in Tennessee, the financial dealings of Mr. Chin, all of those things in which, obviously, you have done nothing criminally wrong, would you agree in retrospect that in terms of the sensitivity, which you have applied to this job, that for future people, there maybe ought to be a higher level of sensitivity to those kinds of things because they do, unfortunately, like it or not, impair public confidence in the Attorney General and the Justice Department?

Mr. MEESE. Senator, I have thought about this a lot, as you might imagine. I think that if you take each of these incidents separately, if you look at the state of knowledge that I had at the time that the key actions were taken, you would probably agree with me that there was nothing, with the most careful sensitivity, that should have warned a reasonable person or even an unduly sensitive, reasonable person, of potential dangers or potential hazards.

It is only when, way after the fact, other things that could not be foreseen or could not be known at that time, came to light, and then a variety of people, for a variety of reasons, some political, some personal attacks, some media hype, these things are strung together, plus the provisions of the Independent Counsel Act, which are far different from any other investigation, where literally, once you get in the purview of the Independent Counsel, an IRS-type audit of your entire life is done. It is a very different situation from the normal type of thing that anyone else, other than those people covered by the Act, would ever face.

I will be happy, as soon as the report of the Independent Counsel is in, to provide this committee with a detailed analysis of what I am talking about concerning each of these matters that you mentioned in your question, because I think it will be helpful to the committee to understand exactly how the Independent Counsel Act works, and why these things would seem to be raised in a way that is, I think, not only unfair to the individual, whoever that may be, me or anyone else, but also it does tend to create a wrong public appearance as to what is going on.

RELEASE OF INDEPENDENT COUNSEL REPORT

Senator RUDMAN. I would appreciate receiving that, as I am sure the committee would. It certainly seems to me that in some instances people who have been your friends, such as Mr. Wallach, Mr. Chin, and the others, people involved in business ventures, which is their right, that perhaps more sensitivity ought to be shown towards having any relations with them to avoid the appearance of impropriety, which unfortunately becomes impropriety in the eyes of many people across our country.

Mr. MEESE. I understand that, Senator, but, again, I think you will find that when the actions taken were taken by me, there was no such hint, no such suggestion, no such suspicion, no such basis for the most sensitive persons to reach those conclusions.

Senator RUDMAN. I hope that you will furnish that to the committee. I wanted to ask the question and give you an opportunity to answer it. I have stated publicly that I have thought you have not been sensitive to some of these. If I am wrong, I would like to read about it sometime.

This is your last appearance, unless there is some special event, before this subcommittee, which I chaired for sevaral years, and now my friend, Senator Hollings, chairs. I thought that it would be an appropriate question to ask you.

Mr. MEESE. I appreciate the question because it does enable me to acquaint the committee with the true situation, which is not always portrayed in the media, and I will relish the opportunity to provide a factual analysis, which I think will answer all of your questions.

APPREHENSION OF FUGITIVES

Senator RUDMAN. I think the committee would be very pleased to receive it.

Mr. Attorney General, I have a few questions and because of the number of members who are here and have questions, I am going to submit some for the record, but the more important ones, dealing with the Department itself, I would like to ask you directly. It may be that others who are sitting directly behind you, who head up your major components, might wish to aid in the answers.

I am concerned about what appears to be a dispute going on between the Marshals Service and the FBI, which has to do with a turf battle as to who is going to apprehend criminals.

The Marshals Service and the FBI, I guess, have a somewhat different role or a different view, at least, of their respective roles. We have copies of some memos that should have been written on asbestos by Director Morris and Director Sessions, explaining their views.

I don't have any problem with the fact that there are differences, but I think, in the final analysis, those differences have to be resolved, and if they cannot be resolved between the two agency heads, who are two good men, whom I respect greatly, then it seems to me that the Attorney General ought to solve those problems. I want to give you a couple of examples of the difficulties.

Recently, while travelling abroad on official business in a foreign country, a member of our staff was told of an instance in the London Embassy where two U.S. Marshals went to an employee of the CIA to request assistance in locating a particular fugitive. The Marshals said, and this is a quote, "Don't tell the FBI we are here." Fortunately, I am told, the CIA employee immediately recognized the problem and, in fact, informed the local FBI Resident Agent.

Situations like this really don't help very much. I would hope that in your answer, or someone's answer, you are going to tell us that the problem is about to be solved. These memoranda are a great lesson in memoranda, and I would say that if you want to write something hot, make sure that there is just one copy, and it is never out of your custody, because the copying machines in this city are ubiquitous and they spray these around. These memoranda were furnished to the subcommittee. They were not achieved through spurious channels.

Director Sessions wrote, "The positions taken by the U.S. Marshals Service failed to provide for the investigative agency's need to direct all facets of an investigation. The objective of the investigative agency includes not only the apprehension of fugitives but the necessary evidence collection for successful prosecution, whereas the only objective of USMS is apprehension. We have also learned that USMS is apprehending on an interstate basis State and local fugitives without any Federal process. This undermines the unlawful flight to avoid prosecution program, and we believe is clearly beyond the statutory authority," and so on.

Then the letter from Mr. Morris, whom I also have great respect for, says, amongst other things, "Director Session's memorandum of December 18 raised issues regarding fugitive jurisdiction within the Department of Justice. It contained many misrepresentations and inaccuracies, which warrant a full explanation."

When one arm of your Department accuses the other arm, and I know Judge Sessions pretty well, of misrepresentations and inaccuracies, you have a problem down there, Attorney General Meese, and I want to know what you are going to do about it, and what you are going to do about it soon, because this turf battle doesn't help anybody, except fugitives and criminals, nobody else.

Mr. MEESE. Senator, I agree with you that it not only should be settled soon, but will be settled soon.

I also agree with you that letters like that are better not written. It verifies what I used to tell my clients in private practice, "Say it with flowers, say it with candy, but don't say it in writing."

I would suggest that the history of this matter shows that the two agencies were asked to try to resolve this between the two of them. It did not appear that it was possible ultimately, although they made an attempt to do that. Therefore, I asked Steve Trott, the Associate Attorney General, to make recommendations to me and to bring the options to me which represent the viewpoints of the two agencies.

He did that last Friday. I have just received the memoranda from Mr. Trott and from the two agencies. We are in the process of meeting this week, and I can assure you that by the end of next week this matter will have been resolved.

The matter is more than just a turf battle, it is a matter of how we best coordinate the apprehension of fugitives, which is one issue, and on-going investigations. So it is an issue that is joined in good faith by these agencies, and I am sure that, as I say, within the next 10 days, we will have the answer to it.

Senator RUDMAN. I would appreciate it, and I am sure the chairman of the committee would, if you would further enlighten us on this matter when it is solved, as to what the new policy will be, because I think that it is a very important issue.

Mr. MEESE. I agree, and I certainly will.

[The information follows:]

CORRESPONDENCE REGARDING FUGITIVE PROGRAMS

[CLERK'S NOTE: When the information to be submitted was not received in a timely manner, the chairman wrote to the Attorney General about the lack of response. When the Attorney General's reply was not responsive, letters were then sent to the Directors of the Federal Bureau of Investigation and the U.S. Marshals Service for their understanding of the determination by the Attorney General of the manner in which the two agencies were to conduct their fugitive programs. Those responses were received on August 2, 1988, and by order of the chairman, the full correspondence has been printed in the record.]

[The information follows:]

JOHN C STENNIS MISSISSIPPI CHAIRMAN

ROBERT C BYRD WEST VIRGINIA
WILLIAM PROXMIRE WISCONSIN
DANIEL K INOUYE HAWAII
ERNEST F HOLLINGS SOUTH CAROLINA
LAWTON CHILES FLORIDA
J BENNETT JOHNSTON LOUISIANA
QUENTIN N BURDICK NORTH DAKOTA
PATRICK J LEAHY VERMONT
JIM SASSER TENNESSEE
DENNIS DeCONCINI ARIZONA
DALE BUMPERS ARKANSAS
FRANK R LAUTENBERG NEW JERSEY
TOM HARKIN IOWA
BARBARA A MIKULSKI MARYLAND
HARRY REID NEVADA

MARK O HATFIELD OREGON
TED STEVENS ALASKA
LOWELL P WEICKER JR CONNECTICUT
JAMES A McCLURE IDAHO
JAKE GARN UTAH
THAD COCHRAN MISSISSIPPI
ROBERT W KASTEN JR WISCONSIN
ALFONSE M D'AMATO NEW YORK
WARREN RUDMAN NEW HAMPSHIRE
ARLEN SPECTER PENNSYLVANIA
PETE V DOMENICI NEW MEXICO
CHARLES E GRASSLEY IOWA
DON NICKLES OKLAHOMA

FRANCIS J SULLIVAN STAFF DIRECTOR
J KEITH KENNEDY MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

July 11, 1988

The Honorable Edwin Meese III
Attorney General
Department of Justice
Constitution Avenue between
9th and 10th Streets
Washington, D.C. 20530

Dear Mr. Attorney General:

As you will recall, during your April 20, 1988 appearance before this Subcommittee, you were asked several questions regarding the ongoing dispute between the Federal Bureau of Investigation and the U.S. Marshals Service relative to the apprehension of fugitives.

You responded that you agreed the dispute not only should be settled, but would be settled soon. You indicated in your remarks that you were meeting with your staff on the matter during the week of April 20th and assured the Subcommittee that by the end of the following week "this matter will have been resolved." Senator Rudman asked you to further enlighten us when this matter was resolved and you assured us that you would.

Unfortunately, after eighty two days and several phone calls to your Office of Legislative Affairs, as well as the Justice Management Division, we still have no indication of a resolution to this important federal law enforcement function.

While I regret intruding on you as you wind up your duties as Attorney General, this is an issue of considerable concern to the Subcommittee. Accordingly, I must press you for a response this week.

With kind regards, I am

Sincerely yours,

Fritz Hollings

Ernest F. Hollings
Chairman, Subcommittee on
Commerce, Justice, State,
the Judiciary

DEPARTMENT OF JUSTICE

Office of the Attorney General
Washington, D.C. 20530

14 July 1988

The Honorable Ernest F. Hollings
Chairman
Subcommittee on Commerce, Justice, State,
  the Judiciary, and Related Agencies
Committee on Appropriations
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This responds to your letter of 11 July 1988, regarding the allocation of responsibility between the Federal Bureau of Investigation and the U.S. Marshals Service relative to the apprehension of fugitives.

On 30 April 1988, I resolved all pending issues regarding jurisdiction over apprehension of fugitives. I communicated my decision to the Director of the FBI and the Director of the Marshals Service on that date.

I hope this information is of assistance to you.

Sincerely,

Edwin Meese III

EDWIN MEESE III
Attorney General

cc: The Honorable Warren Rudman
The Honorable Dale Bumpers

JOHN C STENNIS MISSISSIPPI CHAIRMAN

ROBERT C BYRD WEST VIRGINIA
WILLIAM PROXMIRE WISCONSIN
DANIEL K INOUYE HAWAII
ERNEST F HOLLINGS SOUTH CAROLINA
LAWTON CHILES FLORIDA
J BENNETT JOHNSTON LOUISIANA
QUENTIN N BURDICK NORTH DAKOTA
PATRICK J LEAHY VERMONT
JIM SASSER TENNESSEE
DENNIS DeCONCINI ARIZONA
DALE BUMPERS ARKANSAS
FRANK R LAUTENBERG NEW JERSEY
TOM HARKIN IOWA
BARBARA A MIKULSKI MARYLAND
HARRY REID NEVADA

MARK O HATFIELD OREGON
TED STEVENS ALASKA
LOWELL P WEICKER Jr CONNECTICUT
JAMES A McCLURE IDAHO
JAKE GARN UTAH
THAD COCHRAN MISSISSIPPI
ROBERT W KASTEN Jr WISCONSIN
ALFONSE M D'AMATO NEW YORK
WARREN RUDMAN NEW HAMPSHIRE
ARLEN SPECTER PENNSYLVANIA
PETE V DOMENICI NEW MEXICO
CHARLES E GRASSLEY IOWA
DON NICKLES OKLAHOMA

FRANCIS J SULLIVAN STAFF DIRECTOR
J KEITH KENNEDY MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

July 15, 1988

The Honorable William S. Sessions
Director
Federal Bureau of Investigation
J. Edgar Hoover Building
Washington, D.C. 20535

Dear Judge Sessions:

Enclosed is the response of the Attorney General to the Subcommittee's request with regard to the allocation of responsibilities for the apprehension of fugitives. Since the Attorney General apparently doesn't want to tell us how he resolved the issue, we would appreciate your furnishing us the decision that was communicated to you by the Attorney General on April 30, 1988. Since this information is the only open item in our hearing record of April 20, 1988, we would appreciate your furnishing us your response by July 23, 1988.

With kind regards, we are

Sincerely yours,

Warren B. Rudman
Warren B. Rudman
Ranking Minority Member

Fritz Hollings
Ernest F. Hollings
Chairman, Subcommittee on
Commerce, Justice, State,
the Judiciary

JOHN C. STENNIS, MISSISSIPPI, CHAIRMAN

ROBERT C. BYRD, WEST VIRGINIA
WILLIAM PROXMIRE, WISCONSIN
DANIEL K. INOUYE, HAWAII
ERNEST F. HOLLINGS, SOUTH CAROLINA
LAWTON CHILES, FLORIDA
J. BENNETT JOHNSTON, LOUISIANA
QUENTIN N. BURDICK, NORTH DAKOTA
PATRICK J. LEAHY, VERMONT
JIM SASSER, TENNESSEE
DENNIS DECONCINI, ARIZONA
DALE BUMPERS, ARKANSAS
FRANK R. LAUTENBERG, NEW JERSEY
TOM HARKIN, IOWA
BARBARA A. MIKULSKI, MARYLAND
HARRY REID, NEVADA

MARK O. HATFIELD, OREGON
TED STEVENS, ALASKA
LOWELL P. WEICKER, Jr., CONNECTICUT
JAMES A. McCLURE, IDAHO
JAKE GARN, UTAH
THAD COCHRAN, MISSISSIPPI
ROBERT W. KASTEN, Jr., WISCONSIN
ALFONSE M. D'AMATO, NEW YORK
WARREN RUDMAN, NEW HAMPSHIRE
ARLEN SPECTER, PENNSYLVANIA
PETE V. DOMENICI, NEW MEXICO
CHARLES E. GRASSLEY, IOWA
DON NICKLES, OKLAHOMA

FRANCIS J. SULLIVAN, STAFF DIRECTOR
J. KEITH KENNEDY, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

July 15, 1988

The Honorable Stanley B. Morris
Director
U. S. Marshals Service
One Tysons Corner Center
McLean, VA 22102

Dear Director Morris:

Enclosed is the response of the Attorney General to the Subcommittee's request with regard to the allocation of responsibilities for the apprehension of fugitives. Since the Attorney General apparently doesn't want to tell us how he resolved the issue, we would appreciate your furnishing us the decision that was communicated to you by the Attorney General on April 30, 1988. Since this information is the only open item in our hearing record of April 20, 1988, we would appreciate your furnishing us your response by July 23, 1988.

With kind regards, we are

Sincerely yours,

Warren B. Rudman
Warren B. Rudman
Ranking Minority Member

Fritz Hollings
Ernest F. Hollings
Chairman, Subcommittee on
Commerce, Justice, State,
the Judiciary

U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

August 1, 1988

Honorable Ernest F. Hollings
Chairman
Subcommittee on Commerce, Justice,
State, the Judiciary
Committee on Appropriations
United States Senate
Washington, D. C.

Dear Mr. Chairman:

This is to respond to your letter to me dated July 15, 1988, which was also signed by the Honorable Warren B. Rudman, Ranking Minority Member.

In regard to the allocation of fugitive apprehension responsibilities among the FBI, Drug Enforcement Administration and the U. S. Marshals Service (USMS), the Attorney General orally advised me of his decision in this matter on April 30, 1988. Among its provisions are:

1. The FBI would retain exclusive responsibility for all fugitive investigations in assistance of state and local authorities under the Unlawful flight to Avoid Prosecution statutes.

2. The FBI would retain exclusive responsibility for seeking the apprehension of subjects charged with substantive offenses in FBI investigations prior to conviction.

3. After adjudication of guilt, if the person is sought for apprehension because of a Federal probation, parole, bond default or mandatory release violation, or because of escape, the USMS shall have apprehension responsibility. However, in these matters where the fugitive, or an organization of which he is a member, is the subject of an existing FBI foreign counterintelligence, organized crime, or terrorism investigation, or where a fugitive commits an additional offense for which the FBI is seeking his arrest independently, the FBI may assume exclusive apprehension responsibility upon written notice to the USMS.

4. Where the USMS disagrees with FBI assumption of exclusive apprehension responsibility, the policy sets out a mechanism by which the Associate Attorney General shall resolve disputes within 48 hours of receiving a request.

5. The USMS would have responsibility to locate fugitives sought by foreign governments within the United States, with certain exceptions.

It is my understanding that the Attorney General will issue written policy guidance incorporating the above five points with additional clarification concerning the Department of Justice's fugitive program.

I am committed to working to ensure that this extremely important aspect of Federal law enforcement responsibility, fugitive work, is carried out in the most professional and positive manner possible.

Sincerely yours,

William S. Sessions

William S. Sessions
Director

1789 1989

U.S. Department of Justice

United States Marshals Service

Director

One Tysons Corner Center
McLean, Virginia 22102

02 AUG 1988

The Honorable Ernest F. Hollings
Chairman
Subcommittee on Commerce, Justice,
State, the Judiciary and Related
Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your letter, jointly signed by Senator Warren B. Rudman, regarding the allocation of responsibilities for the apprehension of fugitives.

As you know, the Marshals Service and the FBI have exercised their respective jurisdictions over fugitive matters on the basis of a Memorandum of Understanding (MOU) executed in 1979. The Attorney General has recently determined that the principal jurisdictions spelled out in the 1979 MOU will remain essentially intact, with the FBI exercising primary jurisdiction in fugitive matters relating to terrorism, counterintelligence, organized crime and Unlawful Flight to Avoid Prosecution. The Marshals Service will assume additional responsibilities relative to warrants for DEA major narcotics fugitives. The Marshals Service will retain jurisdiction over most other fugitive warrants unless the FBI or another federal investigative agency has a compelling interest in a particular fugitive because of his/her involvement in an ongoing case. In the latter instances, when the FBI seeks primary jurisdiction, a procedure for notification to the Marshals Service was established. Within seven days, the Marshals Service would relinquish jurisdiction or, if the Marshals Service either has developed significant investigative leads or has expended a high level of resources in a fugitive investigation, the Marshals Service may request the investigative agency to agree to the continuation of the Service's apprehension efforts. Absent an agreement on the matter, the Marshals Service may ask the Associate Attorney General to approve its continued efforts in the case.

In a somewhat broader sense, the Attorney General also established a mechanism to resolve any other jurisdiction issues that might arise with respect to fugitive apprehension by advising me that the determination on specific cases will be made by the Associate Attorney General.

I trust this is responsive to your inquiry and I appreciate your continuing interest in the activities of the U.S. Marshals Service.

Sincerely,

Stanley E. Morris

OMNIBUS ANTI-DRUG ABUSE ACT OF 1988

Senator RUDMAN. Legislation has been introduced in both Houses of Congress to authorize additional appropriations beyond that requested in the fiscal year 1989 budget submitted by the President.

The additional resources include $73.8 million for the Marshals, $10 million for U.S. Attorneys, $38 million for FBI, $120 million for DEA, $75 million for INS, $200 million for prison construction. These amounts are beyond the President's budget in legislative proposals.

I would like you to comment, if you could, on the need and the ability to utilize these funds during fiscal year 1989 because we have some budgetary problems. So it is probably the second part of the question that is more important than the first.

Mr. MEESE. Senator, at the present time, this bill, which was fairly recently introduced, is being analyzed. I had a meeting as recently as this morning with representatives of OMB and some of the key elements of the drug enforcement personnel in the Department and in other Departments. At this point, I would have to say that we are still analyzing it as far as the administration position is concerned.

One of the key questions that I have also is the one that you raised. That is, if this money were available, and the Congress and the administration reached an agreement that the deficit reduction program or Gramm-Rudman-Hollings, would be breached for this purpose, could we really use all of this money, or what percentage of it could we use. We will be submitting to the Congress, and I am sure to this committee, that position, including a detailed analysis of those resources which are devoted to the Department of Justice.

SINGLE PURPOSE DRUG ENFORCEMENT AGENCY

Senator RUDMAN. That is very important. We will need that because we will be marking this bill up in the near future and, obviously, this is something that we would like to know.

As you know, we have supported all of these programs across the board, but this year in particular, with the Summit Agreement between the President and the congressional leadership, we would like to know what can be utilized, because if it can't be utilized, I guarantee you there are places in this subcommittee budget that are currently underfunded that we are going to have to use some money for.

I only have two other brief questions. On DEA, it was established to be the premier agency of drug enforcement. Its budget request this year is $538.1 million. The Coast Guard, of course, right now is devoting a slightly larger portion of its budget to drugs than DEA, and the air interdiction portion of the Customs Service budget is approaching DEA's total appropriation.

I just want to know whether DEA is still going to be the primary focus of drug enforcement, because it seems to be scattered.

As part of that question, I want to give you just one other fact, and that will be my last question and it is really tied together.

DRUG ENFORCEMENT ADMINISTRATION PRIORITIES

DEA listed as its first priority in its budget submission the need to modernize the air wing, requesting 47 positions and $18 million for the purpose, which may be justified and needed. In addition to these resources, the Anti-Drug Abuse legislation authorized an additional $48 million for the air wing. That is a total of $66 million.

The question is: What is the purpose of the air program contrasted to the Customs' air wing? They have a big air wing that they are doing interdicting with.

Of all those enhancements, how much of these are going to be used in Latin America?

Could military aircraft be used for this purpose?

Should we start thinking about consolidating some of these nonmilitary air wings, because I know enough about support air operations to know that for every separate air operation, there is a maintenance operation, a scheduling operation, there is huge overhead associated. We had better start getting hold of this monster before it grows out of sight.

I would like your general comments on DEA's role, all this air activity, because I can see budgetary requests going through the roof. If you would like to comment on that generally, it will be my last question.

Mr. MEESE. Senator, first of all, there is no question that DEA is and will continue to be the premier drug enforcement agency of the Federal Government.

This came up, as you may remember, as an issue sometime ago when it was proposed by some that DEA be incorporated into the FBI. Approximately 1 year ago, I made the decision that that would not happen based upon my belief that we do need a single purpose drug enforcement agency that could obviously be supplemented by the other agencies that have capabilities that can be used in the drug battle.

We need to continue that for a variety of reasons. This first is the close working relationship that DEA has throughout the country with local police departments in the drug field. The second thing is DEA's particular expertise, which has been acquired literally over decades through its antecedent organizations.

Thirdly, because of the very important job that the DEA is doing overseas in working with the narcotics police of the various countries. Last week, I had the opportunity to see that first-hand as I visited some five Latin American countries and saw the DEA officers literally working in the field with their counterparts from the other countries.

So there is no question that DEA will continue as our premier drug fighting agency.

AIRCRAFT USAGE

As far as the air wings, right now the missions of the various organizations are quite different. The aircraft are used both in terms of geographical location and in terms of what they are doing to further the missions of their respective agencies.

We have attempted, wherever possible, to consolidate maintenance facilities, to use joint maintenance facilities, to utilize the maintenance facilities, where possible, of the Air Force and other military organizations, so that we can make the most economical and cost effective means of providing this aerial support for DEA, Customs, Coast Guard, and others.

The National Drug Policy Board has as one of its projects a review of the whole air situation to see if further economics might be effected because of the growth in terms of scale. I assure you that the objective that you have, to be sure that we are operating in a cost effective way, is absolutely followed by all of the agencies concerned.

One of the things in the proposed drug bill that causes an increase in the aircraft for the DEA would be a number of those would be used overseas, which would augment considerably what is being done there.

Senator RUDMAN. Mr. Attorney General, I thank you for your answers. I would hope, on that particular issue, that at the cabinet level, because you have other agencies involved, there would be some strong consideration being given to consolidate what I call "enforcement" as opposed to transport aircraft, because that is what DEA and Customs are using the aircraft for. Their missions are theoretically different, but in many ways they are similar.

We have an Air Force. We have an Army Air Corps. We have now a Marine Air Corps. We have, of course, naval aviation. If we are going to have a civilian air force, and it looks like it is going that way, it seems at least to this Senator, knowing something about flying, that before this administration leaves office, we ought to come to some conclusion at the cabinet level, as this is a very important issue.

I understand that every Department would like its own air force. I am sure that the Congress would like its own air force, but we don't have it. We use the Special Air Mission, and we use it a lot. I would just make the general comment that before we start having a proliferation of air forces around the country, I hope you will look at it seriously, because we are talking about billions of dollars over the next 4 or 5 years, money that we just don't have.

Thank you for your answer.

Mr. MEESE. We certainly will do that, Senator. I might say that if there are any extra planes left in the special air mission, we would be glad to share the use of those planes.

Senator HOLLINGS. Thank you very much.

Senator Weicker.

CIVIL RIGHTS ENFORCEMENT

Senator WEICKER. Thank you very much, Mr. Chairman.

Mr. Attorney General, let me get to what is not in your statement, and I have looked through your statement rather carefully.

In one sentence on page 20, it says "The request for the Civil Rights Division includes nine positions and $305,000 to expand litigative efforts into voting rights violations and to strengthen fair housing enforcement." Otherwise your synopsis of the Reagan years and your justification for the 1989 budget is totally lacking in any reference to the obligation of the Justice Department to enforce the civil rights of Americans.

I notice you have your cadre of high ranking departmental officials here. Is the head of the Civil Rights Division here?

Mr. MEESE. None of the civil litigating division heads are here because this hearing was called on the subject of drug enforcement and law enforcement coordination. That is why we have the law enforcement components represented.

Senator WEICKER. My understanding, from the opening part of your statement, "Thank you for giving me the opportunity to discuss with you our fiscal year 1989 request——

Mr. MEESE. I am here to discuss any questions you might want to direct to me, but we brought here the people that the chairman requested.

It is my understanding, Mr. Chairman, that the Civil Rights Division head, the Civil Division, the Tax Division, could all be called to testify before this committee, is it not?

Senator HOLLINGS. Yes, sir.

Senator WEICKER. I will have the opportunity to go ahead and question them. So let me question, since you are here, with your statement as to what you feel your accomplishments were and what you are putting forth before this committee as a justification for your requests.

I would like to know whether or not you feel that the law enforcement activities of your Department include civil rights enforcements and, if so, exactly what you feel your accomplishments have been, and exactly why it is that the only reference to anything to do with civil rights is a $305,000 request.

Mr. MEESE. A $305,000 request?

Senator WEICKER. That is what it is, "$305,000 to expand litigative efforts," that is the only mention of anything required in this area.

Mr. MEESE. You are talking about the expansion.

Senator WEICKER. I am talking about page 20, "The request for the Civil Rights Division includes nine positions and $305,000."

Mr. MEESE. This is the request for additional resources. For the Civil Rights Division, for 1989, our request is for some 431 positions and $26 million.

Senator WEICKER. I am citing from your own statement as to what the increase in your request is for.

Mr. MEESE. That is the expanded request. It is nine additional positions and $305,000 to expand litigative efforts into voting rights violations and to strengthen fair housing enforcement.

SUCCESSES OF THE CIVIL RIGHTS DIVISION

Senator WEICKER. Just out of curiosity, why is it that the Attorney General of the United States, after considerable time in office, would make absolutely no reference at all to civil rights as a part of his record of the administration's record of achievement? Is it because there are no achievements?

Mr. MEESE. No, it is not at all. As you know, Senator, we didn't make many references to the Tax Division, or the Lands and Natural Resources Divisions. Perhaps you weren't here when I started my comments, but I mentioned——

Senator WEICKER. I was here when you started your comments, Mr. Attorney General.

Mr. MEESE. In that case, you probably heard me say that I was concentrating, in my statement filed with the committee and in my opening remarks, on the principal subject of this hearing which was law enforcement coordination and drug enforcement, and that the other matters would be covered by other people in the Department as I mentioned a little while ago. I did not try to cover the whole budget, or I would be here for several days.

On the other hand, as far as the successes of the Department in the civil rights field, we have published a report, which if you haven't seen, I will make sure you get, which details and chronicles those successes over the past 7 years.

In addition, we have made greater strides against hate crimes, virtually eliminating the Ku Klux Klan and Nazi type organizations, the white supremist and other hate groups. We have made the investigation of any type of vandalism, violence or crime which is based upon racial or religious prosecution, a top priority.

We have moved forward vigorously in suits against discrimination. We have moved forward vigorously, not only in litigation, but also mediation and the obtaining of agreements to stop any efforts which appeared to be discriminatory in any way.

I am very proud to stand behind the record of this administration and the Civil Rights Division of the Justice Department on all of the matters that you have brought to the attention of the committee.

CIVIL RIGHTS RESTORATION ACT

Senator WEICKER. Mr. Attorney General, what steps have you taken to see that the recently enacted Civil Rights Restoration Act is implemented?

Was this part of the great civil rights effort, the opposition of the administration to this Civil Rights Restoration Act?

Mr. MEESE. The administration was always in favor of restoring the state of the law to what it was before the Supreme Court decision, the Grove City decision, and even expanding that.

There were a lot of what we felt were major expansions of Federal authority that were contained in what was erroneously referred to as the Civil Rights Restoration Act in the particular language of that statute. We preferred a different statute, a statute which we thought would have been more true to the original intent that was expressed.

Our Civil Rights Division, to the extent it is involved, is going forward to implement it. Most of the implementation actually comes from other agencies of the Federal Government. We will continue, through the Civil Rights Division, to exercise our normal oversight authority to make sure that that is done.

Senator WEICKER. If I might move over to that portion of your statement that deals with drugs.

I might add, in my position as chairman of the Subcommittee on the Handicapped, now Ranking Member of that subcommittee, and in my position as former chairman of Labor, Health and Human Services Appropriations, now Ranking Member of that subcommittee, the last 6 years have been one long, drawn out battle against you and your administration on the civil rights of the handicapped, of women, of the elderly, or the poor of this Nation.

I will be most interested to read your report. I suspect that it is about two pages long, if it consists of the accomplishments.

Mr. MEESE. No, Senator, actually it is a rather thick book, and I will see that you get it.

INCREASED REVENUE FOR THE WAR ON DRUGS

Senator WEICKER. Now to move to the Drug Act of 1986, and your view on the achievements of this administration relative to drugs.

My understanding, as I was on the floor on the Drug Act of 1986, was that the money to fund that Act that the administration initially requested was to be reprogrammed from alcohol abuse and mental health programs. That was denied by the Senate just prior to passage.

Now I understand that in the Senate amendment to the Budget Act, it increases the war on drugs by $2.1 billion, and we expect to achieve that money through increased IRS compliance.

My question to you specifically is: Assuming that we are not going to reprogram alcohol abuse and mental health funds, and it is puffing a lot of air, as far as this Senator is concerned, to feel that they are going to get their billions from increased IRS compliance, do you consider the drug situation of sufficient seriousness to warrant taxes being raised to pay for the war on drugs?

Every politician, not just this administration, not just Republicans in the administration, Democrats, Republicans, everybody wants a war on drugs, and I have yet to see anybody stand up and say, let's pay for the war on drugs, which is going to be, I think, even by your reckoning, mine, or anybody else's, a mighty expensive job, both in terms of law enforcement and in terms of education.

I think, as the chief law enforcement officer of this nation, it is up to you to impress upon the nation what is involved here, both in terms of its danger, and you have done a very effective job of that, but also what is required in terms of sacrifice to win this battle.

I am tired of reprogramming funds, whether it comes from the administration or whether it is increased IRS compliance coming from the U.S. Senate. For God's sake, will somebody stand up here and use not just the power but the publicity of their office to demand sacrifice from the American people to do what is necessary.

Would you support increased revenues to pay for the tab that is going to be required for a war on drugs?

Mr. MEESE. Senator, I think I would answer that question the same way that then Candidate Reagan, in 1980, answered the question when he was asked, would you be willing to increase taxes in order to pay for an adequate defense of the United States.

He said: If it came to the point where we had to choose between having an inadequate defense or raising taxes, then I would reluctantly support an increase in taxes to pay for that defense.

I have the same view when it comes to the war on drugs. I think that if we came to the point where we had to increase taxes and that was the only way that we could finance the $2.1 billion, or whatever the figure is, that is deemed jointly by the administration and the Congress to be necessary, then certainly I would support that. But I don't think that we are at that point.

If we can't find $2.1 billion in a trillion dollar budget, based on the priority that you and I both give to the drug fight, then I would be very much surprised. I will find it myself, and I will tell you where to find it if you want to know.

REPROGRAMMING OF FUNDS FOR THE WAR ON DRUGS

Senator WEICKER. Mr. Attorney General, so I don't let the administration off the hook, since I am going to go ahead and put my guns on my own body, the U.S. Senate, do you feel it appropriate to reprogram alcohol abuse and mental health funds to the war on drugs?

Mr. MEESE. Certainly, the reprogramming of those funds is consistent with the fact that the mental health problem and the alcohol abuse problem are directly related to the drug problem.

Senator WEICKER. That is not an adequate answer. I am not going to sit here and debate that. The fact is that we don't have adequate funds for alcohol abuse. We don't have adequate funds for mental health programs. We don't have adequate funds for science and health programs.

I am not here to argue that point, but I am going to tell you, Mr. Attorney General, I think it is great to dramatize the seriousness of this combat, because it is serious, and you can do that effectively. But this hype of letting the American people and its representatives off the hook by feeling that this is going to be on the cheap, that is wrong, that is dead wrong.

I don't think that you are contributing to the enlightenment of what needs to be done by emphasizing the war on drugs without emphasizing what the cost of the war on drugs is going to be and that we ought to pay that cost.

Mr. MEESE. Senator, I think it is clear that I believe we should pay the cost. I certainly have not underestimated the cost either in dollars or in lives.

ADEQUACY OF FUNDING $2.1 BILLION

Senator WEICKER. Do you think that the $2.1 billion is a low figure probably?

Mr. MEESE. I think that it may well turn out to be, but based upon what I discussed with Senator Rudman, as to whether the money can be used in a particular year, it may turn out to be the right figure.

I used that as the highest figure that anybody has suggested, and that is why I believe, certainly on a priority basis, it could be found in the existing amount that is appropriated in the Federal budget.

Senator WEICKER. Thank you, Mr. Chairman.

Senator HOLLINGS. Thank you, Senator.

Senator Bumpers.

DRUG ABUSE BY SOCIAL CLASSES

Senator BUMPERS. General Meese, is there any merit to the argument that drug use among the more affluent classes in America is on the decrease, and among the lower income levels on the increase?

Mr. MEESE. Senator, I believe personally, based on what little data we have, that that is a correct statement.

In a sense, it is a sign of some success. The success is that while there has been a continual increase in drug use by both classes, as you described them, the affluent, or people who are working, people who are in school, and the success of the drug prevention programs that exist in schools, communities, and workplaces, we think, we are starting to see a leveling off in drug use.

We are not as sure that a similar preventive effect is taking place among what I would call the hard core adults, the people who are not working, the people who have dropped out of high school.

It is likewise, among the high risk youth, those who are dropouts now, those who were involved in teenage pregnancies and drug abuse and alcohol abuse, among this group, which is kind of a, you might call it, sub-culture, which is very difficult to provide the preventive information or to reach these people.

I think we are not as confident that there has been a decrease or a leveling off of the increase of drug abuse among that group, and that is why they have been especially targeted in our strategies.

MUSLIM INTERVENTION IN DRUG PEDDLING

Senator BUMPERS. You have seen the film that most of us have seen, that the NBC affiliate here showed on the evening news last night, and before that on the local station here, where the Muslims sort of took the law into their own hands. Are you familiar with that?

Mr. MEESE. I am familiar with it. I haven't seen the film, but I am familiar with it.

ADMINISTRATION LEADERSHIP IN THE WAR ON DRUGS

Senator BUMPERS. It seems to me that what they did was deplorable, but what they are trying to do is very commendable. I think that it is a manifestation of the frustration that people all across the country are experiencing about our seeming inability to really deal with this problem in a meaningful way, if it is true in the Mayfair Apartments here, that area, that people can't walk to the grocery store for fear of their lives, where drugs are being peddled and purchased by just children, babies almost, in that area.

My point is this, to continue with what Senator Weicker was talking about, the increase for DEA does indeed seem minimal. Forget the dispute over the jurisdiction between the Coast Guard and the DEA; it does seem to me that the request for agents in the DEA is very minimal in light of the magnitude of the problem.

Unless we make a much more aggressive effort than we have made in the past, you are going to see more vigilante groups trying to do something in their own neighborhood, and that should be of serious concern to all of us. The problem is terrible, but having vigilante groups take the law into their own hands to do something about it can be very dangerous to this country.

I am inclined to agree with Senator Weicker that $2.1 billion, as we passed on the Budget Resolution the other day, the D'Amato-DeConcini Amendment, doesn't seem like very much when you consider the erosive effect that drugs are having on our country.

That is not really a question, it is just a statement. Quite frankly, I think Congress, because of the lack of leadership from the administration, is going to take the bull by the horns and do their own thing, and the amendment the other day was a manifestation of that.

COURTROOM PROBLEMS

Let me ask you this question. What kind of problems are you having in the courtroom?

The Marshals Service, apparently, feel that they need considerably more help. What kind of courtroom violence are you experiencing now that you have not experienced in the past?

We just had a sedition trial in my State, and the place looked like an armed camp down there.

Mr. MEESE. Senator, first let me say that I would take issue with your statement that this administration has not provided leadership in the battle against drugs.

First of all, we have more than tripled the resources of the Federal Government in the battle against drugs, the Federal resources; that we have coordinated the resources of the Federal Government, martialed them effectively for the first time in history; the fact that we have vastly increased the prevention, the treatment, virtually every phase of dealing with the drug problem, both drug trafficking and drug abuse.

We have provided leadership not only to the Federal Executive Branch, and provided the legislation which was passed by Congress in many cases, but we have also provided leadership to State and local governments.

I would also add that all of these things indicate the position taken by this administration, which has done more in the battle against narcotics than any administration in history.

I would also suggest to you that the problems you talk about in neighborhoods are not really Federal problems, they are really the problems of local governments. In the District of Columbia, since the Congress does appropriate funds for the District of Columbia, at least in part, there is perhaps more of a Federal involvement. Our DEA people do work very closely with the Metropolitan Police as they do with the police in other States.

Let me just say that I don't think at any time, we can let go unchallenged, a statement that this administration has not taken a leadership position.

DISTRIBUTION OF DEA AGENTS

Senator BUMPERS. General, let me ask you this question. You are asking for 5,887 positions in DEA. How many of those will be agents in the field?

Mr. MEESE. Approximately 3,000.

Senator BUMPERS. In my State, we have 1 percent of the Nation's population. If you distributed those agents just on a population basis, which as a rule of thumb we use on money, it means that there would be 30 agents in the entire State of Arkansas, and I can tell you that that is absolutely nothing in my State.

Then, we won't get that many because DEA concentrates so much of their efforts along the coast, legitimately, in Texas, in Arizona, in California, in Florida. I have no quarrel with that, I am simply pointing out that I will bet you don't have 15 people in the State of Arkansas, and we have a drug problem just like every other State has.

Mr. MEESE. Senator, again, we don't think that we are ever going to get enough DEA agents to deal with every particular incident that takes place some place in the country.

I am not challenging your statement that we are going to need more DEA agents, I certainly subscribe to that idea. There are a lot of budget considerations and budget constrictions, particularly in this appropriations account. As you know very well, we have certain constraints upon us.

Nevertheless, I think it is important, when we have the DEA agents we have, that we have a multiplyer effect on their activities. The way they have been able to work in your State and other States with local law enforcement and State law enforcement to organize and train and facilitate more effective task forces against drugs, I think is a measure of their capabilities even though they are small in number. I don't disagree with you that the Nation is going to need more drug agents at some point.

CERTIFICATION OF MEXICAN EFFORTS TO ELIMINATE DRUGS

Senator BUMPERS. Did you tell the President, General Meese, that Mexico should be certified as cooperating with the United States?

Are you familiar with the vote we had in the Senate last week?

Mr. MEESE. Yes, I am.

Senator BUMPERS. Did you play a role in advising the President to certify Mexico as a country that is making progress and trying to help us eliminate drugs through that country?

Mr. MEESE. I chaired the National Drug Policy Board meeting in which that was discussed, in which all of us there gave our views. I gave my own. A view came out of that meeting somewhat different from that, but it was then taken back to the State Department, and later I concurred in the recommendation to the President that came from the State Department.

Senator BUMPERS. Incidentally, I did, too. You don't need to be defensive.

Mr. MEESE. No, I am explaining the process.

I concurred in the recommendation that came from the State Department that Mexico be certified.

I might explain, and I think that it might be helpful, that I recognize as well as anyone the difficulties that Mexico has had, the problems that they have had, the corruption that is there among various echelons of government.

I also probably know better than anyone, through our DEA agents who are there and others, that there has been a real effort on the part of the Attorney General of Mexico and his office, and the President of Mexico in supporting the Attorney General of Mexico, and others to try to do something about the narcotics problem in a land which has many difficulties, economic difficulties, political difficulties, and where it is very difficult.

The other problem, quite frankly, that concerns me is that to decertify Mexico will only play into the hands of those in that country who, in a nationalistic or other spirit, would like to get all U.S. cooperation out of that country, and it would severely handicap the DEA's and others' ability to work with the Mexican authorities.

SUPPORT OF PRISONS BUDGET

Senator BUMPERS. I thought that the Senate action was inappropriate for a host of reasons, but there is no point in debating that again here.

Let me just say that I support you totally on your prison budget. I will do everything I can here. Senator Specter and I have both worked very hard. There is no constituency for prisons. It just has to be a labor of righteousness on the part of people who believe that it is a big problem. I certainly intend to do everything I can to help you with that budget.

Let me just ask you two quick questions.

"PLASTIC GUN BILL"—UNDETECTABLE FIREARMS

Have you taken an official position in writing or publicly on the so-called "Plastic Gun" bill?

Mr. MEESE. Yes. I have taken a position publicly that we are very much in favor of legislation that would protect against so-called "undetectable firearms," which is the phrase I prefer rather than plastic gun, because there can be other types of undetectable firearms. We are strongly on record in favor of such legislation.

[CLERK'S NOTE: Subsequent to the hearing, the Department supplied the following additional information.]

[The information follows:]

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 27 1988

Honorable Dale Bumpers
Member
Subcommittee on Commerce, Justice, State, the
Judiciary, and Related Agencies
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Senator Bumpers:

During the Attorney General's testimony at the April 20 hearing on the Department of Justice budget request for FY 1989, you alluded to the "undetectable" firearms problem. As a follow-up to that discussion I am writing to provide you with our position on this issue.

This Department, in cooperation with representatives of the law enforcement community and other federal investigative agencies, has been involved for some months now in a review of both weapons and security technology in order to resolve public safety concerns about the threat of "undetectable firearms." Based upon our review, we have endorsed an amended version of Senator McClure's bill, "the Prohibition of Undetectable Firearms Act" (S. 2051) as a legislative vehicle to deal with the threat posed by criminals and terrorists armed with such weapons.

We have also met with Senator McClure's staff and made substantial headway in arriving at a firm agreement as to the terms of a "plastic gun" package which meets the needs of public safety and accommodates the interests of law enforcement and firearms rights groups. On the basis of these meetings we have presented a set of proposals to Senator McClure that we believe will build on his work to devise a plan that meets the objective that all interested parties share. It is our understanding that it is Senator McClure's strong preference that these proposals be advanced as a separate bill. We have accepted this procedure with the provision that this separate bill would be introduced in both the House and Senate within a week of final notification of the agreement and that all parties (including Senator McClure and his cosponsors and supporters) assure best effects to secure enactment of the separate bill this year.

More recently, we have been working closely with state and local law enforcement agencies on a proposed firearms bill that we plan to submit to Congress on behalf of all interested federal, state and local law enforcement agencies. That proposal will differ in a number of respects from the enclosed measure. In short, we believe that there are several ways in which the undetectable firearms issue can be addressed and we are striving to find the optimum approach.

We look forward to working with you and other interested Senators on this legislation.

Sincerely,

Thomas M. Boyd
Acting Assistant Attorney General

Enclosure

Key Law Enforcement Provisions

First, we should clarify that entirely non-metallic firearms may not circumvent the ban merely by incorporation of a drop or sliver of metal.

Second, the listing of particular firearms components should be revised tc avoid circumvention of the ban through the use of an innovative design which does not include a frame, receiver or cylinder. The attached papers set out suggested language to this end. It may be that the definitional language needs to be adjusted, and we would welcome constructive proposals on that point.

Third, the bill should be expanded to criminalize sales of undetectable firearms (in addition to importation and manufacture).

Fourth, the legislation should include an objective threshold standard tied to the most sensitive setting of magnetometers in use at federal security checkpoints controlling public access areas.

Finally, there should be a prompt and comprehensive assessment of current security threats and capabilities. We are concerned that any statutory direction with respect to specific settings for magnetometers would be counterproductive, restricting needful law enforcement flexibility and constraining our work unnecessarily at the very time when technology is evolving. In this regard, we plan to commence this security assessment immediately, even without a legislative mandate, because we strongly believe it is needed.

Senator BUMPERS. I appreciate that very much. People like Strom Thurmond don't go into these things with their eyes closed. As far as I am concerned, we ought not to be manufacturing guns like that.

You know, they say, fools walk in where angels fear to tread. I recognize the politics of this issue, but for the life of me, I cannot understand how anybody can condone the manufacturing of a weapon which aids terrorists, which is all that weapon could possibly do.

Every law enforcement agency, I expect, Director Sessions, all of the people under you, would feel the same way about it. Their job is tough enough, we have become such a violent society.

Incidentally, I think we have had more homicides, probably drug related, in Washington, D.C., so far this year than there will be in the entire country of Great Britain, that is how violent our society has become.

DISPUTE BETWEEN MARSHALS SERVICE AND FBI

Let me just close with a question that Senator Rudman asked you earlier, and that is about the dispute between the Marshals Service and the FBI.

According to statistics that my staff has prepared for me, and this may be an error and I will give you the opportunity to refute it, the Marshals Service gets 50.1 percent of the total Federal expenditures for fugitive apprehension, and this was $33.5 million in 1985, and they apprehend 91.5 percent of the fugitive felons. It works out to a cost of $2,682 per apprehension.

The FBI, which has a separate jurisdiction, get 49.9 percent of the total Federal expenditures for fugitive apprehension, and they apprehend 8.5 percent of fugitive felons, that is compared to 91.5 percent for the Marshals Service, and the FBI's cost for felon apprehension is $13,519.

Are those figures correct?

Mr. MEESE. I have no reason to believe that they are not correct.

FUGITIVE APPREHENSION JURISDICTION

Senator BUMPERS. Wouldn't that help you in making a decision in resolving this thing?

Mr. MEESE. Actually, it is not a matter of which agency has fugitive jurisdiction, both of them have fugitive jurisdiction and need fugitive jurisdiction. There is no question that one of the key issues, of course, is how you define a fugitive and what the circumstances are around a particular fugitive investigation.

The FBI's responsibility for fugitives is to engage in what are usually long-term, more difficult investigations. The Marshals Service also does a very good job, an exceptional job, particularly, in some of these major fugitive roundups.

Our task really is not to say, it is this agency or that agency. It is to make sure that the FBI fugitive jurisdiction and the way in which they handle fugitives is consistent with their investigation of other cases in which fugitive apprehension is one of the issues. That is the primary thing, and to have coordination between the two agencies so that we don't have agencies either duplicating or conflicting in their efforts to apprehend fugitives.

That is what I am working out, that is what we will resolve. While the statistics appear to have some kind of an imbalance between resources and actual results, I think in practice, because of the difference in the types of investigations that are involved, there is a reasonable explanation for that.

The issue, again, is not awarding total jurisdiction to one agency or the other, it is combining the best assets of both agencies so that they can do a more effective job both in getting fugitives, who are simply people who are fleeing to avoid prosecution or avoid sentencing or conviction or going to prison, as well as to utilize the fugitive investigation process as part of the investigation of other cases within the jurisdiction of the FBI.

Senator BUMPERS. General Meese, this question has been festering for some time now, and it seems to me that they are not going to be able to settle it. It is going to be up to you.

Mr. MEESE. I intend to settle that, as I mentioned earlier.

Senator BUMPERS. When are you going to do it? Give us a deadline.

Mr. MEESE. I indicated, I believe, to Senator Rudman that I expect to have this settled in the next 10 days, by the end of next week.

Senator BUMPERS. That is fine. Thank you, Mr. Meese.

SUFFICIENCY OF FUNDS AND PROGRESS IN THE DRUG WAR

Senator HOLLINGS. Senator Lautenberg.

Senator LAUTENBERG. Thank you very much, Mr. Chairman.

Mr. Attorney General, welcome.

We have been giving to the Department of Justice, including the FBI and DEA, a lot of money over these last few years. The DEA budget alone has averaged about 30 percent increases since 1979. Last year, we boosted our earmark for Coast Guard about 15 percent for interdiction.

Life on the streets has gotten worse. Despite all the seizures, cocaine is readily available. In fact, the street price is dropping, and that suggests that supply, if not plentiful, is certainly adequate.

Have we given enough by way of financial resource to conduct this battle and, Mr. Attorney General, where do we stand? Are we holding our ground? Are we losing ground?

Do you think that we are gaining on the fight against drugs?

Mr. MEESE. Senator, that is always a difficult question to answer, because a lot of what we are doing, we don't know for sure.

We take surveys. If we believe the survey data, we are starting to make progress. As I mentioned earlier, perhaps before you were here, we actually have made significant progress based upon the most recent surveys we have of high school students. They are showing that cocaine use, for the first time perhaps since cocaine was surveyed, among high school students, is down substantially. We know that marijuana has decreased.

Senator CHILES. What is the date of that survey?

Mr. MEESE. This is a survey that was conducted during 1987, so it is the most recent high school survey. There will be another one later this year.

Senator CHILES. Is it cocaine or crack?

Mr. MEESE. Cocaine. Crack is a form of cocaine and this had to do only with cocaine as a whole.

Senator LAUTENBERG. Is the Senator's question on crack one that you can answer the same way?

Mr. MEESE. In my opinion, crack, which is a small percentage of the cocaine use, is probably increasing.

Senator LAUTENBERG. It is growing rapidly.

Mr. MEESE. One of the problems there is that it is much more deadly because it is inhaled and, therefore, enters the system more quickly. As a result, the emergency room admissions and the deaths are probably going to be greater for crack than they are for the more traditional means of taking cocaine.

To answer the question fully, I think, we are starting to make progress. I think there are signs in terms of the demand for and the consumption of drugs that we are starting to make progress. I think we also have to recognize that it requires a sustained effort and probably an increasing effort, as we have discussed in answer to earlier questions, over a period of time.

As far as the resources that are involved, as I mentioned, there are a lot of constraints. This is partially due to the way the budget is allocated within the Federal Government by the Congress as well as by the administration. That is why we are reviewing at this time within the administration whether we shouldn't request additional resources that should be devoted particularly, in my opinion, to more overseas activity to cut off the supply of drugs in the source countries.

We have strategies now, which I studied during the past 2 weeks, which are designed to cut the supply of narcotics coming into the United States by 50 percent during the next 2 years. This would be a major factor in the supply that you were talking about.

I think one other thing is that it may well be that the demand for cocaine is increasing at a slower rate than the supply is increasing in our country. This may be one of the factors contributing to the prevalence of cocaine.

I think that is only one reason, but I think also the supply is increasing at a very rapid rate based upon what I saw being grown in other countries.

COCAINE SUPPLY AND DEMAND

Senator LAUTENBERG. One has to come to the conclusion that, if the supply is growing, then it is hard to say we are gaining on it or even holding our ground.

Mr. MEESE. Whether we are gaining or not is not going to depend on supply. Although supply is a factor, our success is going to depend primarily on demand and consumption and I think there is where we are making progress.

I think we are also making progress in terms of the total effort. Remember, the Federal effort is a very important part of it, but it is a relatively small effort when compared to the effort being made by State and local law enforcement agencies.

One of the things that has happened in the course of the past year has been a major increase of the resources being put into the drug problem by State and local agencies. It hasn't yet reached the proportionate increase that we in the Federal Government have put into it, but it certainly has improved. I think that is going to have a real effect as well.

Senator LAUTENBERG. I know how hard everybody is at work on interrupting the supply but, honestly, I would have to tell you, I don't see us gaining on it. I don't see us holding our ground. We see more corruption, more violence. We see it at all levels of government and we are now beginning to see it in our own country with law enforcement people being seduced by the incredibly high rewards for drug dealing.

I am discouraged by what I see because I feel that we have made the commitment to putting forth the resources. The increases are rarely if ever denied. We are there to try to win this fight.

CURTAILING DRUG DEMAND

You mentioned the demand-side. What are we doing to curtail the demand that helps us gain a significant chunk out of that side of the equation?

Mr. MEESE. For one thing, there has been in excess of 400 percent increase in the Federal resources that have gone into the demand-side.

In addition, just in the Department of Justice, our DEA which is primarily an enforcement agency—a supply-side agency, if you will—nevertheless has a demand reduction unit which provides training for State and local people. We have our own DEA agents very active in the demand program.

The DEA and FBI together sponsor one of the most successful programs, the sports drug awareness program, which has a potential of reaching some 57 million high school students, school-age students.

We have anti-drug programs as part of virtually every component of our Department, including the Federal Prison System because we have found that just as you go hunting where the ducks are, a large percentage of drug abusers are among convicted criminals.

In addition to that, we have a major program which is being launched as a part of the strategy of the National Drug Policy Board to concentrate on user responsibility, to hold users responsible for their drug use and to discourage others not just on the basis of the health information, which itself should be significant and is to many people, but also because of the potential penalties, whether those penalties involve the loss of a driving privilege, whether they involve incarceration, whether they involve mandatory drug treatment programs, whatever they are.

I would say that there has probably never been more emphasis placed upon demand reduction and I expect that to increase and improve.

DRUG ABUSE TREATMENT PROGRAMS

Senator LAUTENBERG. When we look at the efforts to reduce demand, obviously, education is a critical one. I don't know whether your Department has the principle jurisdiction for that educational effort, but it doesn't seem to me that your folks are the best trained to do that because a large part of this has to take place in the educational system.

How about on the treatment side? In the State of New Jersey, as you know, we have a major, major drug problem, violence, crime, all of the horrible things. We have it in our cities. It permeates our society. Unfortunately, that is the case across the country.

What, if anything, are you doing to help us get treatment facilities?

We do have these addicts. They are there. They are not going to go away. Unless we treat them, unless we help them get out of this habit, they are going to be out there doing the same things that they do when they need a fix. They will kill somebody. They will rob somebody. They will burglarize someplace.

What are we doing there?

Mr. MEESE. Senator, in the treatment field, as you know, we have considerably increased the resources that are being made available by the Federal Government to the States for treatment.

The interesting thing is that out of the monies that were appropriated in 1987 and 1988 for treatment purposes only a portion has even been drawn down by the States. The resources are there and we are encouraging the States to draw down more of those funds, up to their whole allocation.

Senator LAUTENBERG. Is it a matched program?

Mr. MEESE. There is a certain amount of match to it, but even then the funds have not been drawn down nearly as much as I think they should have been.

FUNDING FOR STATE AND LOCAL TREATMENT PROGRAMS

Senator LAUTENBERG. Is anyone with you familiar with the statistics of how much has been available and how much has been drawn down, so that we have some idea of the proportion when you say they failed to draw it down?

Mr. MEESE. My understanding is somewhere just around 50 percent has been drawn down.

Senator LAUTENBERG. Out of what total resource?

Mr. MEESE. I am not sure of the exact amount, but I will provide that. This happens to be administered by HHS, but I will get that information and provide it to you.

[The information follows:]

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 27 1988

Honorable Frank R. Lautenberg
Member
Subcommittee on Commerce, Justice, State,
the Judiciary, and Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Senator Lautenberg:

As a follow-up to your question to the Attorney General during the April 20 hearing on the Department of Justice FY 1989 budget request, I am forwarding the attached analysis of cash drawdowns by states receiving the Alcohol and Drug Abuse Treatment and Rehabilitation Block Grants administered by the Department of Health and Human Services.

During the April 20 hearing you also expressed interest in high school drug use surveys which the Attorney General referenced in his remarks. Enclosed please find copies of the Department of Health and Human Services publication containing survey results covering the period from 1975 through 1986. Also enclosed are copies of a press release concerning a 1987 survey which has not yet been printed.

Please let me know if you need any additional information.

Sincerely,

Thomas M. Boyd
Acting Assistant Attorney General

Enclosures

(CLERK's NOTE: The Department of Health and Human Services publication of 1975 through 1986 survey results, plus the copy of a 1987 press release are retained in the subcommittee files.)

REWARDS FOR INFORMATION ON DRUG TRAFFICKERS

Senator LAUTENBERG. In the 1986 Omnibus Drug Act, we authorized rewards of up to $50,000 a case for information on major drug traffickers.

Have you been making use of this provision and how much use, just to see if we have something on the books that is worthwhile?

Mr. MEESE. It is my understanding that there has been some use made of this. I can't give you the detail on this. I am sure Mr. Lawn will be able to when he testifies before the committee.

INCREASED PENALTIES AND FINES

Senator LAUTENBERG. The act also increased penalties and fines for drug-related crimes.

Have the courts been imposing these higher penalties?

Mr. MEESE. Yes, they have, Senator. That is one of the reasons why we are seeking more money for the prison construction because there has been a major increase.

We now have close to 40 percent of the prisoners in the Federal system for drug-related crimes and the expansion of the prison population has been due primarily to longer sentences and more people being sentenced to Federal prison for these crimes.

COMPLETION OF THE FAIRTON, NJ, PRISON

Senator LAUTENBERG. On that subject, do you know when the Fairton, New Jersey, Prison is expected to be completed and activated?

Mr. MEESE. I can't tell you myself. I am sure that Mr. Quinlan when he testifies would have that information.

DEA TURNOVER RATE

Senator LAUTENBERG. How about the turnover in the Drug Enforcement Agency, I understand that it is hard to hold people.

Have you been hampered by high turnover, has that been a problem?

Mr. MEESE. I would say that it has not been a major problem, but it is a problem in all of our Federal law enforcement agencies. One of the reasons is that in some of our locations, such as New York City, the cost of living is so much higher than elsewhere that people can move to a different area, join a police force or a State police force, and at the same pay get an increase in their income. That is a problem.

Also, one of the things that bothers us is the fact that the salaries paid to our Federal investigators, which at one time were in the top 10 percent of police agencies throughout the country, have been dropping steadily as local law enforcement increases their salaries to keep up with the demand for top flight personnel. So, these are matters that we do have a concern about.

INFORMATION TECHNOLOGY

Senator LAUTENBERG. One last question, Attorney General Meese, I have a long-standing interest in the use of information technology. I understand that the FBI has several high technology projects underway or on-line and those computer systems, obviously, are only as effective as the quality of the data that goes into them.

I am concerned by reports that the Bureau was unable to take data from wiretaps and put it into the organized crime information system. Either we have to apply more resources to these projects, or the projects ought to be scaled back to size so that they can be used as an effective resource.

I would like to know what the Department intends to do to make the system more effective and to try and get ourselves into a position where the information is easily available to all the sources that need to have it?

Mr. MEESE. Senator, one of the top priorities of our Department, certainly during the 3 years and the fourth budget I have been involved in, has been to expand, improve and regularize our automated information systems.

The FBI has made great strides despite some limitations on fiscal resources. This is a very top priority with us and I think that our system there is a very good system. The concept is good and, as it continues to be implemented, I think it will be very effective.

In this budget there is a request for funds for additional automated information activity and we hope that they will be granted so that we can continue this effort.

Senator LAUTENBERG. Thank you, Mr. Chairman.

Thank you, Mr. Attorney General

PROTECTION AGAINST DRUG PROBLEMS

Senator HOLLINGS. Senator Sasser.

Senator SASSER. Thank you very much, Mr. Chairman.

Attorney General Meese, it is good to have you here today before the committee.

You, sir, are the key law enforcement officer of this country, and there is a perception, I think, abroad in this land that we are losing the war against drugs. I think that is the belief of the American people. In poll after poll after poll, when they are asked about what concerns them most, they will indicate the problem of drugs.

Right here today, in the Nation's Capitol, we have virtual anarchy, almost within the shadow of this Capitol Dome, almost within sight of the Department of Justice, citizens of this country are turning to private groups as opposed to law enforcement officers to protect them from drug users and from drug sellers.

General, that is an absolute outrage. I cannot express to you today the depth of my indignation, not just as a U.S. Senator, but as a citizen of this country that citizens have to turn to private groups here in the Nation's Capitol to protect themselves from the problems of drugs.

In my State of Tennessee, as we have enjoyed some measure of success in Florida or some of the sea areas, we have seen these drug airplanes over fly the coast, move into the little private airports in my State, come in and bribe the sheriffs, spread political corruption, to bring this poison into the country.

What can we do that we are not doing to win this war?

I think this Congress—and I don't think it is any exaggeration—I think this Congress by a very substantial majority would appropriate any sum that we thought would get the job done to excise this malignancy from the body politic.

What can be done about it?

Mr. MEESE. Senator, we need to sustain and continue the efforts that we are making at the present time, so that there is no diminution of our interdiction efforts and our investigation efforts, that indeed as we propose in this budget we need an expansion of all of these efforts.

In addition to that, I think there are some other things we need to do. I think we need to go, as I mentioned earlier, to the source countries and be more effective in the eradication of the coca plants, for example, at their source. Part of my mission during the past 2 weeks has been just that, to get the commitment of the Presidents of those countries to cooperate with us in that effort, and we were successful in doing so.

INCREASE IN DRUG CROSSING SOUTHWEST BORDER

Senator SASSER. If I just may interject something, recent statistics indicate—I think these are statistics of your Department—that the amount of marijuana, cocaine and heroin coming into the United States at the U.S.-Southwest border has increased one-third in recent years. That is an indication to me that we are just not getting the job done.

Mr. MEESE. This is the reason why, in that particular area, we have made a major project called Operation Alliance which has increased the amount of resources and the amount of people that we have devoted to that task on the southwest border.

We have martialed and mobilized our forces and those of State and local police departments much better. We have also used a variety of new techniques and tactics down there which are starting to payoff, and I think that we will be able to make even more progress down there than we have in the past.

The other things that we need to do, quite frankly, as I mentioned again earlier, is work on user responsibility, making it more risky to the potential user to get involved in narcotics. We have to continue our prevention and education programs.

We now have adopted, on the southwest border, a no tolerance rule for smuggling. There were situations in which people could smuggle small quantities of narcotics across the border, they were deemed too minuscule for prosecution. We now prosecute everyone who is apprehended with even the smallest quantity of narcotics, even for personal use.

There are a variety of things that we are doing, but I ask the question that you asked virtually every day: What more can we do?

We are trying to get the best expertise to answer that question and we have added work, added methods, added techniques and added resources, but it is a matter that is going to take a sustained effort.

If I had to say what the most important thing that we need to do in the United States is, it is to keep up our strong enforcement efforts, but to do even more in both the government and the private sector to make sure that drugs are not tolerated in any workplace, in any school, in any community or in any home.

If we can achieve that, if we can take the market away from the drug traffickers, we will have done more than anything else that we could do to solve the drug problem in this country.

OPERATION ALLIANCE

Senator SASSER. General, with regard to Operation Alliance, I am sure you are familiar with the information developed over on the House side by Congressman English's Subcommittee on Government Information, which just released a highly critical study of Operation Alliance, citing "turf battles and lack of strong leadership" as primary reasons for the failure, as they characterized it, of Operation Alliance to stop drug trafficking along the southwest border.

We held hearings in the Governmental Affairs Committee, of which I am a member, last year and we found during the course of those hearings that one of the very serious problems with regard to drug interdiction was the failure of Federal agencies to adequately communicate with each other, to coordinate with each other, and once again we ran into the whole question of turf battles.

It appears to me that we need to spend less time trying to define bureaucratic areas of jurisdiction and more time trying to coordinate an overall war on this whole question of drugs.

So, do we need some sort of super agency to do it?

Do we need to take the jurisdiction of drugs out of all other agencies and put it in DEA?

What is the solution to this?

Mr. MEESE. First of all, with regard to the English report, that report was based on very dated material, much of it was incorrect and distorted. I think even Congressman English himself has essentially said that the situation today is far different from what is reflected in the report.

I am not sure what went on in your committee. I can only tell you this, my own observation, the observation of top people in our Department and in the other Departments, my fellow cabinet members, is that the coordination achieved in the last 2 or 3 years has solved virtually all of the problems. As long as you have people, you are never going to solve all of the problems, but they have been substantially reduced. A great deal of effort is now going into this coordination.

I think Operation Alliance is one of the best coordinated efforts that we have, and it is a far cry from what it was during its first 6 months. What is needed, really, is a continuation of what is working now, the coordinating mechanisms we have through the National Drug Policy Board, the enforcement coordinating group, the prevention and health coordinating and these specific operations.

I will never be satisfied, obviously, because there are always some improvements that you can make, but I am satisfied that we are doing the best job that has ever been done, and certainly a job which is now marshaling our resources and using them in the best possible manner that we know how. To try to change this would be a retrogressive step, in my opinion.

INTERNATIONAL MAGNITUDE DRUG PROBLEM

Senator SASSER. One final question, General.

The United States appears to have a problem with drugs of a magnitude that no other country in the western world has. Do you have any statistics at your command, with regard to the difference between the drug problem in the United States and the drug problem in Western Europe, or the magnitude of the drug traffic into the United States versus the magnitude of the drug traffic into Canada, for example?

Mr. MEESE. Senator, I will provide to you the information that we do have, which is much more sketchy about other nations than our own.

I can tell you this, however, the United States really was the first nation that, because of our consumption patterns, attracted, in the case of cocaine, that drug coming from the Latin American countries. As our supply is growing faster than our demand, which as I mentioned earlier is probably a good thing, even though it is not the total answer, but it is a good thing, and because the price is low here, more and more cocaine is going to Western Europe.

It is for this reason that we are cooperating with our friends and allies there in international activities, in seeking to encourage them to participate in the efforts in Latin America also, because they have a stake in it.

One of the things we learn is that every drug producing or drug transshipment country also develops its own consumption and addict population. So what was originally, perhaps, primarily a United States problem is, unfortunately, starting to be a problem in all the other countries as well, including Western Europe.

Our efforts are not only to work on the international cooperation to reduce the supply coming into the United States, but frankly that will benefit the other countries as well. It is just unfortunate that because 10 years ago even people in the Executive Branch of the government were ambivolent as to whether narcotics were bad for you.

High officials, as high as the White House, were saying that some drugs ought to be decriminalized, others were saying that a little recreation use of cocaine was not bad for you. It was that ambivolence on the part of the government that was a major factor, in my opinion, in letting this consumption increase to the point where it is today.

This administration, of course, has been very firm, and as a result we are in the process, I think, of starting to make progress, as I mentioned in answer to your earlier question, but it has to be a sustained battle.

Senator SASSER. My point is this, General, if the problem in this country is much, much worse than it is anywhere else, and that is my subjective perception, then it appears to me that other countries are either doing something right or we are doing something wrong. I think we need to turn to them and see what we can learn from them.

Mr. MEESE. The funny thing is, Senator, that the other countries are turning to us to see what we are doing right so they don't get in the same fix as we are. I agree with you, 10 years ago this country was doing some very wrong things, and I think we are now back on the right track.

Senator SASSER. I am advised that the Senate is voting at the present time, so the committee will stand in a short recess until the chairman returns.

Mr. MEESE. How long will that be?

Senator SASSER. General, I would say that the chairman ought to be back here within 5 or no more than 10 minutes.

[A short recess.]

ILLEGAL ALIEN FELONS

Senator HOLLINGS. The subcommittee will please come to order. Senator Chiles.

Senator CHILES. Thank you, Mr. Chairman.

General Meese, I know it has been a long morning for you and a lot of questions have been asked, but I just wanted to touch you on a couple of things.

As you know, our Budget Resolution, and we are going for our first conference meeting this afternoon, provides an increase for enforcement programs, including DEA, FBI and INS.

I would certainly hope that this subcommittee would concur with those increases and that you will use some of those funds to concentrate on alien felons. For example, provide the Organized Crime and Drug Enforcement Task Force with additional personnel and resources.

You mentioned in your statement about the recent immigration bill and the Department's activities in that regard. I want to bring your attention to a small element, a very important element of our immigration problem, and that is what I call the illegal alien felon.

These are not people who are just violating the law and coming here. They have come here illegally, and now they have violated our laws, and many of them are guilty of aggravated felonies. We know that this is becoming more widespread across the country.

In my State, we have the Haitian gangs and the Jamaican posses operating. We are seeing also, of course, the Colombians. We have a Cuban element. Now, of course, we are beginning to see the Chinese. The closer and closer we see the takeover of Hong Kong, it looks like gangs are now coming from there into this country. The Japanese gangs are coming. As the Italians are cracking down there, we are seeing now importation of the Sicilians. We know that many of these people are actually being brought into this country purely and simply to engage in the drug activities.

They operate through their ethnic and family connections. They certainly are a blight on the good Haitians, the good Jamaicans who are in this country, the good Colombians, and all of the others. They taint that name. They are the most violent of the criminals that we find operating now. And, they are the scourge of our local law enforcement people because, right now, they are arrested, they bond out, they simply change their name, and they are arrested somewhere else. Even when we convict them, they are back in this country, even if they are deported.

What I think we have to have is special attention to this segment. I have introduced a series of some four or five bills I hope that you will look at them. We have had some hearings before the Judiciary Committee to try to deal with them expressly as they are a major segment of our drug problem today, especially in crack, but in a lot of the other areas, too.

To be able to track these people, to be able to hold them while we can deport them, I think is just one of the major, major problems that we have. Your attention to that, and the attention of the Justice Department, is something that I think is essential.

Mr. MEESE. Senator, I certainly agree with you. As I believe you know, one of the four major program priorities of the Immigration and Naturalization Service this year is dealing with the criminal alien problem. In support of this, we have increased the number of investigators in the INS. We are working with local police to apprehend and provide for the deportation of those illegal alien criminals.

In addition to that, and you mentioned the bills, we have testified in support of the legislation you have introduced, and I think that this is a valuable way of working on this problem, to make it an additional crime to come back into the United States, once having been deported, after conviction of a crime.

So there are many things along this line, but I want to assure you that we are absolutely in support of the objectives you mention.

U.S. ATTORNEYS, SOUTHERN DISTRICT OF FLORIDA

Senator CHILES. I thank you for that.

I know that INS is undermanned. I know that we have given them additional tasks. I support trying to make sure that those people who come into this country now are legal, are entitled to work. But, I can't think of anything that is more important and should demand more of the resources of INS than to deal with this particular problem of the alien felon.

You talked about the need for improved intelligence. Certainly in this area there needs to be, and there needs to be a tracking, so we can track these people and keep them from this changing of identification.

The other particular thing that I would like to bring to your attention has to do with U.S. Attorneys.

The Southern District of Florida is swamped with criminal cases. There is no division in the country that has the number of cases and caseloads. In fact, it is to the point now where one can't bring a civil case and expect to have it heard by the burden of the criminal cases. Yet, even with the increases in U.S. Attorneys in the last 2 years, we have added no new attorneys to the Southern District of Florida.

Why is that, and why in the world, when we have put in all of the funds for the new attorneys, did we get none when we have the highest caseload in the country?

Mr. MEESE. Senator, part of the reason was that there was a considerable increase in the number of Assistant U.S. Attorneys in Florida during previous years. There was a similar increase to what Florida experienced early in the 1980s, a similar increase in narcotics cases particularly, was taking place in other areas along the border, and additional Assistant U.S. Attorneys were allocated to try to bring those offices up to a small proportion, really, of the manning of the Florida offices.

We are very hopeful of obtaining the positions in the 1989 budget, and I can assure you that full consideration will be given to assigning some of those to Florida. We are as concerned as you are with the increase in cases there. I have asked for a management study review of some of those offices to get an idea of just how many additional positions ought to be allocated, and we are very cognizant of that.

U.S. ATTORNEYS CASELOAD

Senator CHILES. I wish that you would pay particular attention or individual attention to that because, you are right, we did get some additional U.S. Attorneys, but the caseload never stopped.

Mr. MEESE. I understand.

Senator CHILES. The caseload just continued so we are as far behind now in caseload. I think if you look at us with any other district, including New York, Chicago, any of them, and you look at the number of Assistant U.S. Attorneys that they have for their caseload—I don't have those numbers before me now, but I have looked at them—I think you will see that we are swamped, and that is true not only in Miami, but it is true in Tampa and Jacksonville as well. It is certainly true in the Southern District.

I thank you, Mr. Chairman.

VACANCIES IN KEY POSITIONS

Senator HOLLINGS. I thank you.

General Meese, with respect to your appearance here, we appreciate it, it has taken the morning.

As I mentioned earlier this morning, by the end of the week, we will not have a Deputy Attorney General, we will be lacking an Associate Attorney General, and someone to head the Criminal Division. My understanding is that, of course, moving promptly, we first had Judge Arlen Adams of Philadelphia, but he withdrew from consideration. Now Mr. John C. Shephard has withdrawn from consideration.

How are we going to replace anybody and convince the people that we are on top of things, and that law enforcement is on course and not disrupted as you have attested?

Mr. MEESE. Senator, without regard to the first person, who was never nominated, and I generally don't comment on people who are not recommended, in each of the cases that you mentioned there were personal matters that precluded these people from taking the job.

I regret particularly in the case of Mr. Shephard, and I issued a statement earlier this morning that I was very much distressed about the way in which the publicity affected his family and caused him to withdraw his name. It was a particularly great loss to the country.

On the other hand, since that time, we have had recommendations. I will consider them, and I can assure you of several things.

First of all, we will move promptly with the White House, and I am sure we will have a nominee for the Deputy's job very quickly.

We have a person being processed now by the FBI, and I am sure we will have a nomination for the Associate within a very short time, perhaps even this week.

We have an excellent acting head of the Criminal Division who is carrying that job out very well. We also have had several recommendations for that, and we will have a nominee there in the very near future.

The Department operations are running without any problem at all. I will have an Acting Deputy in place so that there will be none of these positions which will go unfilled without someone carrying out that management responsibility, and I have no fear that the Department will operate with the same high degree of efficiency and effectiveness that it has in the past 3 years.

REDUCTIONS IN STATE AND LOCAL ASSISTANCE

Senator HOLLINGS. One last question with respect to doing more. We attest to the fact that we are going to do more. In fact, in drugs, you can see the concern of the Members with some $215 million increase. Yet, at the same time, you redline or zero out State and local assistance programs, $8 million, State and local grants, some $69 million.

We can't go in two different directions where we are doing more but redlining or zeroing out the programs where we could do more, which have worked extremely well, and where they have been training essential State and local personnel.

For example, a South Carolina highway patrolman not only made an apprehension when he found 10 pounds of cocaine, but he participated in a "controlled" delivery and followed it up all the way from South Carolina to Massachusetts and arrested four drug traffickers at the point of delivery. One of the four was also wanted for murder.

This is a working program. We are doing more, more, more, and then when we look down at the bottom line, you have cut it out. You said that you would go back with the regional programs and request some $12 million. Can we hope that you will come back on the State and local programs, both grants and assistance, also?

Mr. MEESE. Senator, one thing, the type of training that you are talking about of the State highway patrols is an on-going program that is conducted by DEA in our Operation Pipeline, and that will continue. It is not affected by these particular grant funds.

It really boils down to a very simple situation. You know the constraints that the overall budget agreement placed on the Federal budget. You know, in turn, the constraints that were put upon this subcommittee in the appropriations accounts that you have. In turn, the Department of Justice takes its share of those funds, and we have to decide on our priorities.

It came down to the point, when we had a limited amount of money and had to allocate resources, that we felt it was more important to allocate those resources to Federal responsibilities, to the FBI, the DEA and to our prison construction, than it was to pass on funds to the local governments which have actually not increased their effort proportionately to that of the Federal Government.

I say that reluctantly because I, like you, believe that the more funds that are available to local and State governments, the better job they are able to do. I would hope that they would increase their effort.

I certainly would be willing to take another look at the State and local funding and to see if there is some way in which we could provide those funds. Right now, I can't tell you much more than that we will take a look.

CONGRESSIONAL DRUG INITIATIVES

Senator HOLLINGS. Look at it closely because we are calling for an increase. You have the Specter Amendment on the prisons. You have the DeConcini Amendment with respect to a couple of billion dollars with respect to drugs. We are looking at increases, and we are about increasing. While we are increasing on the one hand, we are cutting out on the other hand.

The first fellow I had in the office this year was Admiral Yost. Everybody was talking about increasing drug enforcement, but they had cut him $100 million in the Coast Guard.

Mr. MEESE. We were very much concerned that the Congress cut Admiral Yost's budget.

Senator HOLLINGS. Very good, sir, we appreciate it. We appreciate your indulgence here this morning.

If the other gentlemen would come momentarily to the table please.

SUBMITTED QUESTIONS

The record will show that Senator Weicker had some additional questions. We will keep the record open for the questions of the other members.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Department of Justice

1989 Budget Request

Question: The 1989 budget requests $6.2 billion for the Department of Justice. How much of this $772.5 million or 14-percent increase is devoted to drug enforcement?

Answer: The requested $772,461,000 increase over the 1988 enacted level includes a total of $206,245,000 attributed to drug enforcement. This amount excludes $329 million of the Bureau of Prisons' facilities expansion program which can be attributed directly to the drug enforcement efforts.

Question: Are any of these funds spent on "demand-reduction" efforts?

Answer: First, the demand and supply sides of the drug equation are inextricably linked and cannot be neatly separated. Of the $206.2 million in the DOJ budget related to the anti-drug campaign, $7.5 million is reported in the Federal Drug Law Enforcement and Abuse Summary as part of "demand-reduction" in connection with a number of new and ongoing activities within several organizations in the Department that provide support to the Federal Government's demand-reduction activities.

The Department of Justice in cooperation with the United States Coast Guard and Customs Service is currently emphasizing the demand reduction side through its "user focus" or "zero tolerance" initiative and seeks to rally the nation to confront all vestiges of the drug culture and make the lives and circumstances of those who participate in illegal drug use increasingly difficult, more expensive and therefore, unattractive.

Since 1984, when the Demand Reduction program was initiated by the Drug Enforcement Administration (DEA), numerous workshops, seminars, and clinics have been presented to high school coaches, counselors and administrators. The 15,000 representatives who participate in this drug abuse prevention training have contact with over two million high school age youths involved in sports.

In furtherance of our goal to reach youths ages 4 to 16, DEA has joined forces with the National Youth Sports Coaches Association to develop standards for parents to follow in developing and administering youth sports programs, including drug prevention and education information and materials. Through this program, youth are reached at an age when they are most receptive to the drug prevention message, and before they have become too vulnerable to drug abuse.

DEA Demand Reduction Coordinators serve as a resource to assist State and local law enforcement, schools, civic and community groups, and businesses in initiating program activities that will reduce public demand for drugs.

DEA drug prevention efforts with the Explorer Division of the Boy Scouts of America have continued to expand with the development of a guidebook and videotape on demand reduction as well as anti-drug rallies and drug prevention seminars for Explorers and their advisors. The emphasis of this program is to encourage Explorer posts to develop and implement drug abuse prevention programs in their communities.

DEA has also recently initiated a Drug Free Business Strategy in cooperation with the Texans' War on Drugs. This strategy is an effort to get a maximum number of Texas business and industrial companies to establish anti-drug programs. If this pilot effort is successful DEA may try to replicate it elsewhere throughout the country.

The Department of Justice demand reduction program is not limited to the DEA. Complementing the Federal Bureau of Investigation's (FBI) drug law enforcement efforts, the FBI has for years taken every opportunity to inform the public about the dire consequences of drug abuse. FBI special agents-in-charge and supervisory personnel nationwide routinely lecture school and community groups on drug demand reduction, distributing printed, audio and videotape material to underpin that campaign.

In April 1988, a drug demand reduction coordinator position was established in each of the 58 field offices. Experienced agents filling those positions further enhance the FBI's drug demand reduction program, an element of the FBI's National Drug Strategy. The coordination role includes:

- reviewing the existing Drug Demand Reduction Program with field office management and drug squad supervisors to foster appropriate coordination between FBI law enforcement and demand reduction initiatives and objectives;

- establishing procedures to receive demand reduction information from a variety of sources throughout their respective field offices;

- ensuring that appropriate demand reduction information, material, video presentations, etc., are disseminated to the proper forums and groups within their field offices;

- facilitating the presentation of demand reduction programs and speeches; and

- establishing and maintaining liaison with appropriate demand reduction specialists within both supply- and demand-side agencies.

DEA and the FBI jointly sponsor the highly successful Sports Drug Awareness Program. This program seeks to prevent drug abuse among school-age youth, with special emphasis on the association of the coach and student athlete. With the coaches' commitment to preventing drug abuse, student athletes are encouraged to become role models, using positive peer pressure to dissuade other students from abusing drugs. This program has the potential of reaching over 57 million school-age youth.

The Immigration and Naturalization Service's (INS) Border Patrol has also embarked upon its own drug awareness programs in public schools. The Drug Awareness programs incorporate K-9 teams into the school presentations which have been very successful in the McAllen and Laredo, Texas communities. The programs are designed for maximum impact on the particular grade level audience. Programs for elementary school age children incorporate puppets and working materials such as coloring books, stickers, and posters. The middle school programs stress negative peer pressure and the harmful effects of chemical and substance abuse and the consequences of drug use. High school and adult/civic presentations continue the middle school theme and are supported with informational handout materials. Community cooperation, involvement, and support of local law enforcement groups are also encouraged. The Border Patrol has provided Drug Awareness programs to more than 140,000 students. Community interest in the INS Border Patrol program is both enthusiastic and unlimited in the desire to help children live drug-free lives.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) was directed by the Attorney General, in April 1987, to be the lead agency for the High Risk Youth Committee of the National Drug Policy Board. In this capacity, OJJDP has served as the liaison to the Policy Board and the White House for the 15 agencies that support programs for high-risk youth. OJJDP's High Risk Youth Program focuses on youth and teenagers under the age of 18 who, because of certain characteristics, are especially likely to use illegal drugs and/or alcohol.

Initiatives included in the High Risk Youth Program are based on zero tolerance for illegal drug use by high-risk youth and accountability on the part of individuals, families, and communities for preventing and controlling illegal drug use. Examples of OJJDP's demand reduction programs include: development of program models that address the factors that place juveniles at high risk for involvement in illegal drug and alcohol abuse; providing technical assistance and training to help schools, civic groups, police, courts and other juvenile justice decision makers to work together to implement community drug and alcohol abuse programs; a project to assess gang problems; and, development of a national public awareness campaign.

The Bureau of Justice Assistance works closely with and supports the National Crime Prevention Campaign, featuring, "McGruff the Crime Dog." On August 13, 1987, McGruff entered the war on drugs and was featured in the first drug prevention television commercial. At the same time, the Department of Justice sponsored the "Just Say No to Drugs" campaign kickoff. Several programs have been initiated to educate school children and the public about the dangers of drugs and to encourage them to "just say no" including a 23-minute McGruff spectacular video available at no cost to all law enforcement associations and State educational systems.

United States Attorneys are a powerful new force in efforts to reduce the demand for drugs. The Attorney General has encouraged the 93 U.S. Attorneys nationwide to use their positions as chief legal officers of the Federal Government in their districts to support the drug demand reduction efforts of private citizens. The Attorney General's Advisory Committee, composed of U.S. Attorneys, has formed a Drug Abuse Prevention Subcommittee to provide guidance and support for U.S. Attorneys' drug demand reduction activities.

U.S. Attorneys often direct their prevention efforts through the Law Enforcement Coordinating Committee (LECC) program, which coordinates Federal, State, and local law enforcement activity within each district. For example, under the leadership of one U.S. Attorney, the LECC established a statewide coalition on substance abuse, comprised of community and business leaders working with drug abuse professionals and law enforcement officers.

U.S. Attorneys in many parts of the country are already involved in the drug prevention effort. In Washington, D.C., the Black Assistant United States Attorneys Association has worked with the District of Columbia school board to develop a drug abuse education program for high school students. The program is intended to educate students about drug abuse, develop a rapport between the students and the law enforcement community, and distribution. The success of this effort prompted the Department of Justice to develop its own drug education program. U.S. Attorneys present the programs, which are tailored to each community's needs, to high school students throughout the country.

In support of U.S. Attorneys efforts in this area, the Executive Office for U.S. Attorneys (EOUSA), within the Department of Justice, maintains extensive information on drug abuse education and prevention that is available for all districts. Within EOUSA, the LECC staff compiles current prevention research, articles, speeches, and videotaped presentations for use by the U.S. Attorneys' offices, and shares successful demand reduction activities developed by U.S. Attorneys with other districts. EOUSA also helps to identify and schedule speakers for LECC-sponsored demand reduction meetings.

Finally, the Federal Prison System (FPS) provides an extensive program for inmates. Currently, forty to fifty percent of all new inmates entering FPS have had some history of chemical abuse. Each FPS institution has a Chemical Abuse Program. This program primarily educates inmates about the effects of alcohol and drug abuse, and how inmates can avoid and/or be treated for these substances. In addition to the educational component of this program, about one-fourth of all FPS institutions also have some type of inpatient treatment program.

When a new inmate enters an FPS institution, he/she completes a Chemical Abuse Assessment Program and is counseled about treatment options, if needed. Inmates can then volunteer to enter an FPS Chemical Abuse Treatment Program. As a result, an average of 3,000 inmates participate in the FPS' Chemical Abuse Treatment Program monthly.

Three FPS institutions -- Fort Worth, Texas; Lexington, Kentucky; and Tallahassee, Florida -- have drug treatment units. These units provide full inpatient treatment and follow-up programs to help inmates overcome their specific chemical dependencies. In addition, inmates released to halfway house programs participate in Narcotics Anonymous meetings to help them deal with handling drug dependencies prior to final release into the community after completing their sentences.

In addition, we should not forget that every drug-related investigation and the increased emphasis on user prosecution have a demand-reduction aspect as well. Encouraging street level enforcement contributes greatly to the overall demand reduction strategies.

Of course all law enforcement entities should use their positions of knowledge, respect and authority to educate our citizens to the dangers associated with the use of illegal drugs and steer them away from substance abuse to a drug-free way of life.

Resource Allocation

Question: The Federal budget for drug control efforts, according to the General Accounting Office, climbed from $1.2 billion in 1981 to nearly $4 billion in 1987. In an era of budget deficits and budget-cutting, this large increase reflects the heightened national concern over drug abuse and drug trafficking. Of the total increase in Federal drug control money in the 1980's, about 90 percent was for drug supply reduction efforts. Given the large increases in our Federal drug control budget, especially in the law enforcement area, why is our country awash in illegal drugs?

Answer: Our nation's current drug problem results from a number of inter-related factors, including the tolerant attitudes of the 1960's and 70's, the availability of drugs, the demand for those drugs, the level and success of enforcement efforts, and the severity of our drug laws, the level of public knowledge concerning the dangers of illegal drug use, the difficulty of extraterritorial enforcement efforts, among other societal factors.

Question: **Is the war on drugs winnable? When can we expect reductions in the availability and prevalence of illegal drugs in our society?**

Answer: Yes. However, we must not delude ourselves into thinking this is a short-term effort. We will succeed only with sustained and aggressive law enforcement efforts both at home and abroad, and a firm commitment by all citizens throughout the country to reduce the demand for drugs. Ultimately, we can expect reductions in the availability and prevalence of illegal drugs in our society when enough people say "no" to illegal drug use, when significant numbers of drug trafficking organizations are destroyed, their assets forfeited to the government and their members incarcerated, and when foreign and domestic sources of supply are checked. The Administration continues its vigorous efforts in all three areas, and has established a long-term program to enhance these operations.

Question: **Should we concentrate more efforts on demand reduction?**

Answer: Yes, the nation should focus more efforts on demand reduction without reducing the level of supply reduction activities. It should be noted that more aggressive supply reduction efforts also serve as a deterrent to drug trafficking and abuse by raising the costs of drug use and trafficking.

A concentrated effort at all levels of government on demand reduction is critical to reduce and eliminate drug use in this country. Increased efforts on demand reduction, however, should not be accomplished at the expense of supply reduction. Also, it is not possible to equate federal spending on supply reduction activities with demand reduction spending. The State and local governments appropriately provide for most of the resources directed at demand-reduction activities through the schools and drug treatment facilities. The Federal government does provide a significant contribution through block grants and other programs to assist in this area.

The National Drug Policy Board is currently emphasizing the demand reduction side through its "user focus" or "zero tolerance" initiative and seeks to rally the nation to confront all vestiges of the drug culture and make the lives and circumstances of those who participate in illegal drug use increasingly difficult, more expensive and, therefore, unattractive.

Sentences and Fines

Question: The Anti-Drug Abuse Act of 1986 increased the sentences and fines applicable to major drug traffickers. The Act provides for enhanced penalties for repeat offenders and mandatory minimum sentences for certain violations.

Are Federal prosecutors seeking the enhanced penalties and stiffer sentences as intended by Congress?

Answer: Yes. This is reflected in the large increase in drug related incarcerations in our Federal prisons. The most recent Bureau of Prisons statistics available for new court commitments on narcotics charges show a sharp increase from 2,682 in 1985 to 3,330 in 1986.

DEA reports record numbers of convicted offenders entering prison on drug charges. In 1987, the total number imprisoned was 10,042, a 7.6 percent increase over 1986. Defendants convicted on cocaine-related charges represent the largest increase in imprisonments from 1986 to 1987, from 4,462 to 5,607 (26 percent).

Question: Are major drug traffickers receiving longer prison sentences?

Answer: Yes. The latest sentencing statistics show that the average sentence for heroin trafficking convictions increased from 69 months in 1986 to 76 months in 1987, for cocaine from 65 months to 69 months.

Omnibus Anti-Drug Abuse Act of 1988

Question: Recently, the Senate voted 95-0 to increase, by $2.5 billion, the amount in the 1989 Budget Resolution for drug control. Of the $2.5 billion, it is assumed that the Department of Justice will receive an additional $801.9 million above the President's 1989 request. If these funds are indeed authorized and appropriated, how will you utilize the increase in funding?

Answer: The President has called for an Executive-Legislative Task Force to work together on any new drug legislation. It would be premature to detail how any additional funds would be utilized. However, depending on the amount of new resources that are authorized and appropriated we would allocate the added funds among those programs and activities that are most necessary to implement our National Drug Strategy.

Office of Justice Programs

Anti-Drug Abuse Grants

Question: The Anti-Drug Abuse Act of 1986 authorized grants of $225,000,000 to State and local governments. For 1987, $225,000,000 was appropriated. Due to delays in implementing the program, we appropriated $70,000,000 for 1988. But as with the RISS programs, this partnership between Federal; State and local governments is being abandoned. The justifications indicate that the previous appropriations will permit the State and local governments to expand their efforts to enforce State and local drug laws.

How has this program been going, do the States have the money?

Answer: The partnership between Federal, State and local governments is not being abandoned.

The Anti-Drug Abuse Act of 1986 was signed into law on October 27, 1986. Within two weeks the Bureau of Justice Assistance notified Governors of the availability of funds under the Formula Grant Program and sent letters to over 1,500 Federal, State and local criminal justice and governmental agencies, requesting input and recommendations for the Discretionary Grant Program. United States Attorneys and the Law Enforcement Coordinating Committees were sent a briefing package on the program which outlined the role they might play in its implementation.

Administrative funds, which provided the States with the resources needed to develop the strategies, were made available immediately, with the first awards made on January 6, 1987. The first full Formula Grant applications for program funds were received from the States in April and awarded in June 1987. To date, 55 of the 56 eligible States and territories have received awards from the 1987 funds. The one remaining State not awarded is Arkansas which submitted its application in late April and is currently under review. Fifteen States have submitted applications for 1988 funds.

A review of the State Strategies submitted for 1987 reveals an increase in the level of coordination and cooperation among State, local and Federal criminal justice agencies. The strategy development process itself required a coordinated criminal justice system response; implementation of the strategies has resulted in coordinated efforts by the system to reduce drug abuse through tough enforcement of drug laws, swift adjudication of drug cases and punishment and rehabilitation of offenders. States have formed multi-jurisdictional task forces in an effort to increase the impact of the resources allotted. Crime labs are being upgraded; data information systems are also being improved. The Bureau submitted its first annual Report on Drug Control to Congress on April 20, 1988. The report describes in detail progress on the first year of implementation of this program. Additional copies are available if needed.

Question: Are the States expanding their forces as I would suspect they might be holding back in view of the zero funding in 1989?

Answer: States have generally been taking the necessary steps to implement the program in a prudent manner. The process set up by the Bureau of Justice Assistance requires the States to submit Individual Project Reports within thirty days of the award of a subgrant from the State's formula grant. A review of the Individual Project Reports indicates the States are obligating funds in a timely fashion. By mid-March of 1988, approximately 60 percent of the 1987 funds had been subgranted to over 700 individual projects. It is expected that 1,200 projects will be funded from 1987 funds. Since formula grants are active during the year of award plus two additional years, the funds awarded in 1987 may be active through 1989 and 1988 funds may be active through 1990.

Record Insert by Committee: We shall include in the record a letter from the National Conference of State Legislators with respect to the Anti-Drug Abuse grants.

National Conference of State Legislatures

444 North Capitol Street, N.W.
Suite 500
Washington, D.C. 20001
202/624-5400

President Ted Strickland
President
Colorado State Senate

Executive Director
William T. Pound

March 22, 1988

Honorable Ernest Hollings
United States Senate
Washington, DC 20510

Dear Senator Hollings:

I am writing on behalf of the National Conference of State Legislatures, as the chairman of its Law and Justice Committee, to emphasize the need for a continued strong commitment to the fight against drug abuse. The partnership between federal, state, and local government for enforcement activities that was created in the crisis atmosphere of October 1986 (the Anti-Drug Abuse Act) must not be abandoned.

The Anti-Drug Abuse Act of 1986 authorized grants of $225 million to state and local governments. That was pared to an appropriation of $75 million the first year as states laid the groundwork for their assault. Now the Administration proposes complete elimination. NCSL believes this program should be continued as an essential component of the federal-state effort to eradicate drug use.

Funds that have reached the states are enhancing investigation and prosecution of drug-related offenses, facilitating creation of multi-jurisdictional task forces to combat street sales of crack, and permitting increased marijuana eradication. Treatment and rehabilitation are an important part of the long-term efforts to eradicate the scourge of illicit drugs and increases in these programs are welcome. However, we must also face the reality of the unending combat in rural communities as well as in the streets of our urban centers.

State and local law enforcement agencies that seek to forge a vigorous assault on illicit drugs cannot do so if the federal government reneges on its much-publicized commitment to reinforce our efforts. Our adversaries will not be intimidated by such empty threats. Clearly, we cannot win this war with words alone; a properly funded, cooperative effort is our best hope.

NCSL believes that the federal budget deficit is one of the nation's gravest problems, demanding creative and cooperative solutions involving all levels of government. We therefore support continued efforts to reduce the federal deficit. We realize this means both Congress and the Administration must wrestle with many complex and difficult choices. Most wrenching, perhaps, will be balancing this overriding imperative to reduce the federal deficit against calls for adequate funding for many important programs.

There is a fundamental principal, however, that NCSL believes should guide budgetary decisions. It is critical that the fairness and integrity of the intergovernmental fiscal system remain intact. As articulated in our official policy:

> "States are willing to share proportionately in the necessary cuts; however, the states have contributed disproportionately to past efforts to reduce the deficit as a result of federal spending and revenue initiatives."

NCSL realizes that states will have to accept many spending cuts in state programs as their fair share of the deficit reduction burden. However, we cannot accept proposals that rely too heavily on state and local government assistance programs to produce the needed deficit reduction. NCSL has identified a handful of priority programs, such as state and local anti-drug abuse grants, that we feel should be protected from significant reductions.

NCSL looks forward to working with Congressional leaders to develop creative and responsible solutions to our serious national budget problem. We will continue to work for a solution that respects the integrity of the intergovernmental fiscal system; a system which has taken years to evolve and should not be significantly altered without consideration of the implications for state and local governments.

Sincerely yours,

Don Doyle
Don Doyle
Chair, Iowa Senate Judiciary Committee
Chair, NCSL Law and Justice Committee

Ted Strickland
Ted Strickland
President, Colorado Senate
President, NCSL

QUESTIONS SUBMITTED BY SENATOR RUDMAN

Regional Information Sharing System

Question: **Your 1989 budget contains no funding for the seven RISS projects. It is my understanding, however, that when the head of the Office of Justice Programs testified before the House of Representatives recently, he announced that the Department had changed its position and would now support funding for RISS.**

Does this new commitment to support RISS mean the Department will actively participate in finding the funding necessary to continue this vital program? -- Or, does the commitment simply mean that when Congress provides the funds necessary to carry on the RISS programs, the Department will for the first time not object to the provision of funds for this purpose?

Answer: The Department has indicated its intention to fund the RISS program at the $12,000,000 level from existing resources in 1989.

QUESTIONS SUBMITTED BY SENATOR INOUYE

Department of Justice

Coast Guard Budget Cuts and Drug Interdiction

Question: How will cuts in the Coast Guard budget affect drug interdiction efforts in and around Hawaii?

Answer: The Congressionally-mandated Coast Guard budget cuts have affected drug interdiction efforts in Hawaii in the following ways:

- Lack of fuel funding forced curtailment of all routine patrols for a period of several weeks. At present, surface patrols by the three Hawaiian-based small patrol boats will be reduced by 55 percent for the remainder of 1988 due to the continuing shortage of fuel funds.
- Law enforcement patrols by larger cutters have also been reduced and law enforcement is being conducted primarily in conjunction with other scheduled operations such as Aids to Navigation deployments.
- Air surveillance patrols for purposes of law enforcement have been totally eliminated. Helicopter support for cutters has been reduced by 55 percent in conjunction with reduced cutter patrol schedules.
- The closure of Coast Guard Station Kauai, caused by the reduced funding levels, has eliminated any permanent Coast Guard presence on that island.

The Administration has submitted to Congress a $60 million supplemental request which includes funds to restore these patrols. This supplemental would be funded by transfers from other components of the Department of Transportation.

Question: In light of the increased use of marine vessels to transport drugs between the Hawaiian Islands and within the Pacific, what actions are being taken to assist Hawaii's law enforcement agencies in curbing this escalating problem?

A. How much in Federal funds will be committed in 1990 for this purpose?

B. Is this an increase or decrease from 1988?

Answer: The Coast Guard provides support to local law enforcement agencies in the following ways:

- By sharing intelligence information on drug operations through the National Narcotics Border Interdiction System (NNBIS) chaired "Marine Smuggling Working Group". The group includes representatives from all county police departments, the Customs Service, the

Drug Enforcement Administration, and the Coast Guard. Intelligence sharing has led to recent successful vessel seizures and coordinated enforcement efforts.

- By providing surface and air assets in response to specific requests from local enforcement agencies for support of their drug interdiction and eradication efforts, and in response to local intelligence provided by them.
- By providing logistics support in transporting equipment and personnel between islands in support of drug enforcement efforts.
- By using Coast Guard helicopters to video tape coastlines and identify possible smuggling sites and providing this intelligence information to local police departments.

Coast Guard funds are not specifically earmarked for assisting local law enforcement agencies. However, the President's 1989 budget would restore Coast Guard operations to at least their 1987 levels and include additional funding for increased intelligence support. In addition, the Coast Guard will continue its commitment to cooperating with and assisting local law enforcement agencies, when possible.

Hawaiian Federal Detention Facility

Question: What is the timetable for the Bureau of Prisons' plan to build a detention facility in Hawaii?

Answer: The Bureau of Prisons is currently revising its five-year facilities expansion plan in connection with the development of the 1990 budget estimates. Consequently, it is not possible to provide a specific timetable at this time. However, it is anticipated that Bureau of Prisons' staff will travel to Hawaii this summer for review of potential sites.

Lexington, Kentucky FCI Female High Security Unit

Question: I understand that the Bureau of Prisons maintains a sub-basement high security unit (HSU) for women at the Lexington Federal Penitentiary. Many organizations, including the ACLU and Center for Constitutional Rights, allege that this HSU violates the United Nations Standards for the Minimum Treatment of Prisoners.

I am informed that five female inmates assigned to this HSU are confined to their cells for twenty-three hours a day and kept under constant surveillance; all actions are monitored, including what they read, say, and eat.

I understand that the Bureau of Prisons announced that it

will close the Lexington HSU, and transfer the five inmates to a larger HSU in Marianna, Florida.

Answer: Most of the allegations appearing in the media and elsewhere regarding the conditions of confinement in the female high security unit (HSU) at Lexington, Kentucky are simply untrue or seriously misrepresent the facts.

Previously the Bureau of Prisons had no high security facility for female offenders because of the relatively small numbers of females in custody who required this level of security. The HSU at Lexington was opened in October 1986 for women whose confinement raises a serious threat of external assault for the purpose of aiding the offender's escape or who have serious histories of assaultive, escape-prone or disruptive behavior. The unit was designed to house 16 offenders and presently has six prisoners assigned to it. To insure that only inmates requiring maximum security are assigned to the unit, each case is personally reviewed by the Director of the Bureau of Prisons prior to placement there.

The unit is neither a control unit nor a disciplinary unit and sensory deprivation is not practiced or condoned. The Bureau of Prisons has ensured that inmates in the unit have access to educational, religious, medical and mental health programs and a small industries program has been established. There are daily opportunities for inside and outside recreation. With the exception of short periods during the day, prisoners in the unit are allowed out of their cells from 8:00 a.m. to 9:45 p.m. and are allowed to freely associate with other residents of this unit. They are allowed full correspondence privileges and access to personal and legal visits as well as outside telephone calls.

Question: **What is the status of the Bureau of Prisons' plans to close the Lexington HSU?**

Answer: The Bureau of Prisons plans to phase out the Lexington High Security Unit operation concurrently with the opening of the new Federal Correctional Institution at Marianna, Florida.

Question: **What is the status of the new HSU in Marianna, Florida?**

Answer: There will be no female high security unit at Marianna, Florida. Rather, one unit at Marianna has been designated as a female unit appropriate for the housing of female offenders who, as a result of their offense, criminal history, institution behavior, or other management considerations, require incarceration in a high-medium security institution environment. We currently anticipate that Marianna will be activated in July, 1988.

Question: **Will the present inmates at Lexington HSU be subject to the same conditions at the Marianna HSU?**

Answer: Due to the increased size and different physical design of Marianna, the physical conditions of confinement will differ significantly from those at Lexington. Female offenders assigned to the female unit at Marianna will be subject to the same national policy and operational procedures as any other male or female offender with similar security requirements confined within the Bureau of Prisons. Program opportunities for inmates assigned to the female unit will be commensurate with those for all other offenders in the Bureau of Prisons.

Question: **What is the criteria for assignment to Lexington's HSU?**

Answer: Candidates for placement in the Lexington unit are those female offenders whose confinement raises a serious threat of external assault for the purpose of aiding the offenders' escape. Other females who have serious histories of assaultive, escape-prone or disruptive activity may be considered on a space available basis. The Director is the approving authority for designation and redesignation into and out of the unit after discussion and concurrence with the Regional Director, Southeast Regional Office, and the Assistant Director, Correctional Programs Division. Placement in the unit is accomplished as a classification procedure, and not as a disciplinary measure.

Question: **What restrictions are placed on inmates at Lexington's HSU?**

Answer: The inmates assigned to the unit at the Federal Correctional Institution, Lexington, Kentucky are subject, essentially, to the same restrictions as are inmates at other Federal Bureau of Prisons facilities housing offenders with similar security needs. The unit at Lexington is a self-contained and totally separate operation from the main facility at Lexington and accordingly, offenders assigned to the unit are not permitted any association or direct contact with other inmates assigned to different units at the Lexington facility.

Question: **What is the purpose behind the detailed monitoring of inmates at Lexington HSU?**

Answer: The security needs of offenders assigned to the female unit at Lexington dictate the security procedures in place. Contrary to popular allegations, offenders assigned to this unit are not under constant surveillance and monitoring for what they read, say, or eat. The unit does have in place video monitoring equipment that allows for the monitoring of common areas.

Question: Are any of the inmates at Lexington HSU eligible for transfer to a general population prison? When, and under what conditions will the inmates at Lexington HSU be eligible for transfer to a general population prison?

Answer: There are currently six inmates assigned to the Lexington unit. All six inmates are appropriate for confinement in a high-medium security environment. Accordingly, all six inmates will be transferred to the Marianna institution when it becomes operational. Once assigned to the Marianna facility, all six inmates will be in a "general population" facility.

Witness Security Program

Question: I am concerned about the Federal Government's treatment of participants in the Federal Witness Protection Program. I have heard of inadvertent breaches of security by participants who were not aware that their behavior would be deemed a breach of security. I am also aware of a case in which a protected witness was dropped from the program, and is unable to receive social security benefits unless he reveals his true identity and original social security number. The U.S. Marshals Service (USMS) has refused to assist this witness in obtaining social security benefits because he was dropped from the program for breaching security.

Many of the problems seem to arise from the lack of information and counseling by the USMS about what a protected witness can reasonably expect upon joining the program. I understand services offered by the Marshals Service to program participants differ greatly from State to State.

Does the USMS maintain a uniform set of minimum guidelines for accepting, processing, relocating, counseling and maintaining protected witnesses? If not, why not?

Answer: Yes. The Witness Security Division has had extensive guidelines for administering the program since 1979. These written policies and procedures cover all facets of the Witness Security Program.

In the absence of more specific information concerning the individual who reportedly cannot apply for Social Security benefits without disclosing his original name, the Marshals Service is unable to provide an explanation. New identities, substantiated with authentic documentation, are provided to program participants as a security measure. If the individual breaches security, and it is determined that he/she will not be relocated again, all further protective services, including documentation, are terminated.

It should be pointed out, however, that under no circumstances does anyone lose his/her entitlement to

Social Security benefits, regardless of the number of times the witness has been relocated and redocumented.

Question: Does the USMS provide participants psychological counseling to assist protected witnesses and their families to cope with the transition into the program? If not, does the USMS plan to make psychological counseling available to participants? How much would it cost the USMS to develop and implement such a counseling program?

Answer: The Marshals Service does provide psychological counseling since the Service has long recognized the stress attendant to relocation under a new identify in an unfamiliar community. The Service has provided funds for counseling to witnesses and their dependents since the program's inception in 1971. Since April 1982, the Witness Security Division contracted with a team of psychologists who have unique experience in dealing with individuals making dramatic social relocations, not unlike protected witnesses. These psychologists provide vocational guidance to all witnesses, as well as psychological counseling to individuals. The Witness Security Division continues to use local counselling resources in the relocation area for long-term counselling or therapy. Local resources are understandably more accessible to program participants on a daily or weekly basis.

Question: What information is provided to each candidate for Federal protection about the program, the responsibilities of the participants, and the responsibilities of the USMS to the participants?

Answer: Before an individual is authorized by the Criminal Division to enter the Witness Security Program, a representative of the Witness Security Division explains the basic tenants of the program to him/her and to any adult family members who would also be relocated. Also in attendance at the "Preliminary Interview" are the sponsoring government attorney and the investigative case agent. This interview is usually conducted before the individual's involvement in the investigation has become known, so that if he/she does not wish to enter the program, alternatives to relocation and a change of identity can be explored without further endangering the witness.

At the Preliminary Interview, the Witness Security inspector delineates the services the Marshals Service can provide and, equally important, the limitations of the Program. The inspector also explains what is expected of the witness and family relative to maintaining their security.

If the individual is willing to enter the Program and is authorized entry by the Criminal Division, he/she and adult family members each sign a Memorandum of Understanding (MOU) with the Marshals Service. This MOU

-- a 15-page document -- delineates the points covered during the Preliminary Interview. It again explains what services the witness can and cannot expect and what the Marshals Service expects from the witness. The witness is encouraged to have his private attorney, as well as his sponsoring government attorney, review the MOU.

Additionally, when the witness arrives in the relocation area, the Witness Security inspector again reviews the necessary security guidelines which must be followed. If the witness is under supervision by a Federal probation officer, both the inspector and the probation officer review the terms of the MOU.

Question: **What is the USMS doing to decrease the number of witnesses who are released from the program due to breaches of security?**

Answer: The Witness Security field inspectors continue to counsel and provide guidance to program participants and remind them that observance of the program's security requirements is fundamental to the witness's continued health and well-being.

The Marshals Service cannot be responsible for individuals who repeatedly refuse to follow the program's security guidelines or involve themselves in criminal activities. Before program services are withdrawn because a witness has breached security, the case is thoroughly reviewed by four levels of officials at Marshals Service Headquarters. If it is a first indiscretion, the witness is usually offered a second relocation.

QUESTIONS SUBMITTED BY SENATOR RUDMAN

Department of Justice

Drug Policy Board -- State and Local Drug Control

Question: In March, the National Drug Policy Board, published its lead agency committee reports setting forth strategy and implementation plans for combatting drug trafficking and abuse. The Drug Investigations Committee strategy describes a program for State and local investigations which include:

1. **The establishment of crack cocaine teams in concert with State and local agencies and the Bureau of Justice Assistance,**
2. **Providing support to the Bureau of Justice Assistance's State and local assistance for narcotics control program and**
3. **Participation in the Bureau of Justice Assistance's Organized Crime Narcotics Trafficking Program, which will establish 20 Federal/State and local task forces nationwide.**

How does the Department and the National Drug Policy Board plan to implement this strategy when all funding for State and local narcotics control efforts has been eliminated from the Department's 1989 budget?

Answer: Funds authorized by the Anti-Drug Abuse Act of 1986 and contained in the Omnibus Drug Supplemental Appropriations Act of 1987 and the Department of Justice Appropriation Act of 1988 for State and local law enforcement assistance grants are still in the process of being spent. The 1989 budget request includes outlays estimated at $78 million for this purpose. In addition, an estimated $75 million will be made available in 1989 to State and local law enforcement agencies through equitable sharing from the Department of Justice's Assets Forfeiture Fund. An additional significant amount will also be shared from the U.S. Customs Service Assets Forfeiture Fund.

To date, the Bureau of Justice Assistance has funded five crack task forces in Los Angeles, Minneapolis, Denver, Houston, and Detroit. Additionally, the Drug Enforcement Administration (DEA) has created 18 crack teams in the following cities:

Seattle
San Diego
Denver
Kansas City
Houston
Detroit
New York City
Baltimore
Dallas
New Orleans
Boston
San Francisco
Phoenix
Minneapolis
Ft. Lauderdale
Ft. Myers
Miami
Newark

Two additional crack teams are planned for Los Angeles and St. Louis.

Just as the federal government's budget has increased for drug law enforcement, State and local jurisdictions must increase their share of the drug enforcement burden. Increased reliance on Federal expenditures does not engender the genuine, cost effective grass roots anti-drug campaign which we need from our State and local governments.

1989 Budget Request

QUESTION: While law enforcement efforts to control the supply of illegal drugs into the country are vital, I am becoming convinced that the key to winning the war on drugs is reducing the demand for drugs. What contribution are law enforcement agencies currently making to demand reduction? Can more be done?

ANSWER: First, the demand and supply sides of the drug equation are inextricably linked and cannot be neatly separated. Of the $206.2 million in the DOJ budget related to the anti-drug campaign, $7.5 million is reported in the Federal Drug Law Enforcement and Abuse Summary as part of "demand-reduction" in connection with a number of new and ongoing activities within several organizations in the Department that provide support to the Federal Government's demand-reduction activities.

The Department of Justice in cooperation with the United States Coast Guard and Customs Service is currently emphasizing the demand reduction side through its "user focus" or "zero tolerance" initiative and seeks to rally the nation to confront all vestiges of the drug culture and make the lives and circumstances of those who participate in illegal drug use increasingly difficult, more expensive and therefore, unattractive.

Since 1984, when the Demand Reduction program was initiated by DEA, numerous workshops, seminars, and clinics have been presented to high school coaches, counselors and administrtors. The 15,000 representatives who participate in this drug abuse prevention training have contact with over two million high school age youths involved in sports.

In furtherance of our goal to reach youths ages 4 to 16, DEA has joined forces with the National Youth Sports Coaches Association to develop standards for parents to follow in developing and administering youth sports programs, including drug prevention and education information and materials. Through this program, youth are reached at an age when they are most receptive to the drug prevention message, and before they have become too vulnerable to drug abuse.

DEA Demand Reduction Coordinators serve as a resource to assist State and local law enforcement, schools, civic and community groups, and businesses in initiating program activities that will reduce public demand for drugs.

DEA drug prevention efforts with the Explorer Division of the Boy Scouts of America have continued to expand with the development of a guidebook and videotape on demand reduction as well as anti-drug rallies and drug prevention seminars for Explorers and their advisors. The emphasis of this program is to encourage Explorer posts to develop and implement drug abuse prevention programs in their communities.

DEA has also recently initiated a Drug Free Business Strategy in cooperation with the Texans' War on Drugs. This strategy is an effort to get a maximum number of Texas business and industrial companies to establish anti-drug programs. If this pilot effort is successful DEA may try to replicate it elsewhere throughout the country.

The Department of Justice demand-reduction program is not limited to the DEA. Complementing the Federal Bureau of Investigation's (FBI) drug law enforcement efforts, the FBI has for years taken every opportunity to inform the public about the dire consequences of drug abuse. FBI special agents-in-charge and supervisory personnel nationwide routinely lecture to school and community groups on drug demand reduction, distributing printed, audio and videotape material to underpin that campaign.

In April 1988, a drug demand reduction coordinator position was established in each of the 58 field offices. Experienced agents filling those positions further enhance the FBI's drug demand reduction program, an element of the FBI's National Drug Strategy. The coordination role includes:

- reviewing the existing Drug Demand Reduction Program with field office management and drug squad supervisors to foster appropriate coordination between FBI law enforcement and demand reduction initiatives and objectives;
- establishing procedures to receive demand reduction information from a variety of sources throughout their respective field offices;
- ensuring that appropriate demand reduction information, material, video presentations, etc., are disseminated to the proper forums and groups within their field offices;
- facilitating the presentation of demand reduction programs and speeches; and
- establishing and maintaining liaison with appropriate demand reduction specialists within both supply- and demand-side agencies.

DEA and the FBI jointly sponsor the highly successful Sports Drug Awareness Program. This program seeks to prevent drug abuse among school-age youth, with special emphasis on the association of the coach and student athlete. With the coaches' commitment to preventing drug abuse, student athletes are encouraged to become role models, using positive peer pressure to dissuade other students from abusing drugs. This program has the potential of reaching over 57 million school-age youth. Additionally, FBI and DEA representatives educate professional athletic teams to the dangers inherent in drug usage and help coordinate the efforts of the professional athletes as role models, to further alert Americans to the same dangers.

The Immigration and Naturalization Service's (INS) Border Patrol has also embarked upon its own drug awareness programs in public schools. The Drug Awareness programs incorporate K-9 teams into the school presentations which have been very successful in the McAllen and Laredo, Texas communities. The programs are designed for maximum impact on the particular grade level audience. Programs for elementary school age children incorporate puppets and working materials such as coloring books, stickers, and posters. The middle school programs stress negative peer pressure and the harmful effects of chemical and substance abuse and the consequences of drug use. High school and adult/civic presentations continue the middle school theme and are supported with informational handout materials. Community cooperation, involvement, and support of local law enforcement groups are also encouraged. The Border Patrol has provided Drug Awareness programs to more than 140,000 students. Community interest in the INS Border Patrol program is both enthusiastic and unlimited in the desire to help children live drug-free lives.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) was directed by the Attorney General, in April 1987, to be the lead agency for the High Risk Youth Committee of the National Drug Policy Board. In this capacity, OJJDP has served as the liaison to the Policy Board and the White House for the 15 agencies that support programs for high-risk youth. OJJDP's High Risk Youth Program focuses on youth and teenagers under the age of 18 who, because of certain characteristics, are especially likely to use illegal drugs and/or alcohol.

Initiatives included in the High Risk Youth Program are based on zero tolerance for illegal drug use by high-risk youth and accountability on the part of individuals, families, and communities for preventing and controlling illegal drug use. Examples of OJJDP's demand reduction programs include: development of program models that address the factors that place juveniles at high risk for involvement in illegal drug and alcohol abuse; providing technical assistance and training to help schools, civic groups, police, courts and other juvenile justice decision makers to work together to implement community drug and alcohol abuse programs; a project to assess gang problems; and, development of a national public awareness campaign.

The Bureau of Justice Assistance works closely with and supports the National Crime Prevention Campaign, featuring, "McGruff the Crime Dog." On August 13, 1987, McGruff entered the war on drugs and was featured in the first drug prevention television commercial. At the same time, the

Department of Justice sponsored the "Just Say No to Drugs" campaign kickoff. Several programs have been initiated to educate school children and the public about the dangers of drugs and to encourage them to "just say no" including a 23-minute McGruff spectacular video available at no cost to all law enforcement associations and State educational systems.

Finally, the Federal Prison System (FPS) provides an extensive program for inmates. Currently, forty to fifty percent of all new inmates entering FPS have had some history of chemical abuse. Each FPS institution has a Chemical Abuse Program. This program primarily educates inmates about the effects of alcohol and drug abuse, and how inmates can avoid and/or be treated for these substances. In addition to the educational component of this program, about one-fourth of all FPS institutions also have some type of inpatient treatment program.

When a new inmate enters an FPS institution, he/she completes a Chemical Abuse Assessment Program and is counseled about treatment options, if needed. Inmates can then volunteer to enter an FPS Chemical Abuse Treatment Program. As a result, an average of 3,000 inmates participate in the FPS' Chemical Abuse Treatment Program monthly.

Three FPS institutions -- Fort Worth, Texas; Lexington, Kentucky; and Tallahassee, Florida -- have drug treatment units. These units provide full inpatient treatment and follow-up programs to help inmates overcome their specific chemical dependencies. In addition, inmates released to halfway house programs participate in Narcotics Anonymous meetings to help them deal with handling drug dependencies prior to final release into the community after completing their sentences.

In addition, we should not forget that every drug-related investigation and the increased emphasis on user prosecution have a demand-reduction aspect as well. Encouraging street level enforcement contributes greatly to the overall demand reduction strategies.

Of course all law enforcement entities should use their positions of knowledge, respect and authority to educate our citizens to the dangers associated with the use of illegal drugs and steer them away from substance abuse to a drug-free way of life.

Question: Section 621 of the Treasury, Postal Service and General Government Appropriations Act, 1988, provides that "each Executive agency detailing any personnel shall submit a report on an annual basis in each fiscal year to the Senate and House Committees on Appropriations on all employees or member of the armed services detailed to Executive agencies, listing the grade, position, and offices of each person detailed and the agency to which each such person is detailed." The statement of the managers accompanying this Act further states, "The Conferees expect these reports on detailees to be submitted to the Committees concurrently with

the President's annual budget submission to the Congress." Further information on this requirement can be found on pages 445-447 and page 1177 of the conference report on H.J. Res. 395.

Please provide this report for the record.

Answer: A copy of the Department's response to the Senate Committee on Appropriations is attached.

Federal Employees Retirement System

Question: **Please provide a comparison of funds originally requested to implement the Federal Employee Retirement System (FERS) in 1988 with the current projections, as well as with the FERS request for 1989.**

Answer: The original 1988 Federal Employee Retirement System (FERS) request for the Department of Justice was $232,190,000. This included a 1987 supplemental amount of $68,651,000 and a 1988 uncontrollable amount of $163,539,000. This amount, however, was reduced to $190,333,000 in a budget amendment that was transmitted in House Document No. 100-15, dated September 23, 1987.

Because the Department was not permitted to adjust 1988 program increases for the FERS costs, this amount ($190,333,000) is the maximum available for FERS. In the unspecified reductions made in the 1988 appropriation, further cuts were made to FERS availability. The total FERS availability for 1989 is $190,333,000 less unspecified reductions made in the 1988 appropriation process.

Currently, the Department is monitoring the 1988 FERS expenditures very closely to assess the FERS requirement for 1989 and 1990. Our latest projections indicate that 1988 FERS expenditures will be at least $155,165,000. The 1988 pay raise costs to be funded using excess FERS availability is $44,773,000. Therefore, there is no remaining 1988 FERS availability departmentwide.

Our 1989 projection based on current FERS enrollment is at least $174,823,400. We anticipate that this amount will increase due to several factors. First, the cost projections are increasing as new employees enter FERS. Because the Department is hiring major numbers of new employees, especially in the law enforcement organizations, this increase will be substantial in 1989. Second, there is another open season for Thrift Savings Plan contributions from May 15 through July 31, 1988. Finally, the Office of Personnel Management (OPM) has advised agencies of their authority to accept belated employee elections to transfer into FERS under certain conditions. All of these factors indicate that additional FERS funding may be required for the Department in 1989.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 29 1988

Honorable Jamie L. Whitten
Chairman
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Public Law 100-202, making continuing appropriations for FY 1988, contains a number of general provisions that apply to all Departments, Agencies, and Corporations. Section 621 of the Treasury, Postal Services and General Government Appropriations Act includes a requirement that "each Executive agency detailing any personnel shall submit a report on an annual basis in each fiscal year to the Senate and House Committees on Appropriations on all employees . . . detailed to Executive agencies, listing the grade, position, and offices of each person detailed and the agency to which such person is detailed."

Employees of the Department of Justice detailed to other Executive Branch components in FY 1987 are shown in the enclosed list.

Sincerely,

Thomas M. Boyd
Acting Assistant Attorney General

Enclosure

Department of Justice Details to Other Agencies During FY 1987

	Grade	From	To
Butterworth	ES	Justice Management Division	White House
Foreman	AD	Office of the U.S. Attorney, D.C.	White House
Brady	ES	Tax Division	Office of the Vice President
Harshman	GM-14	Tax Division	Commission on the Bicentennial of the U.S. Constitution
Lopez	GS-13	U.S. Marshals Service	Vice President's Task Force
Schlachter	GS-13	Drug Enforcement Administration	State Department (Bangkok)
Lierly	GS-14	Drug Enforcement Administration	State Department
Hansen	GS-13	Antitrust Division	White State
Peck	GM-14	Antitrust Division	Office of Management and Budget
Upton	GM-15	Land & Natural Resources Div.	Environmental Protection Agency
Calabresi	GS-15	Land & Natural Resources Div.	White House
Ingersoll	GS-7	Immigration & Naturalization Svc.	White House
Donlan	GS-15	Civil Division	State Department
Patrick	GS-15	Civil Division	Federal Retirement Thrift Investment Board
McCullar	GS-7	Justice Management Division	White House
Hylton	GS-9	Justice Management Division	Office of Management and Budget
Wenk	GS-15	Justice Management Division	Office of Management and Budget
Bullock	GS-14	Community Relations Service	White House
Rhoades	GS-8	Office of Justice Programs	White House
Mullins	GS-11	Office of Justice Programs	White House Conference for a Drug Free America
West	GM-15	Office of Justice Programs	Urban Mass Transit Administration, Department of Transportation
Renshaw	ES	Office of Justice Programs	White House Conference for a Drug Free America
Mather	GS-15	Civil Rights Division	Commission on Education of the Deaf
Schmitz	GS-15	Civil Rights Division	White House
Porter	GM-15	Federal Bureau of Investigation	State Department
Busching	GM-15	Federal Bureau of Investigation	Department of Defense
Simeone	GM-15	Federal Bureau of Investigation	Department of Energy
VanWagenen	GM-15	Federal Bureau of Investigation	Department of Defense
Mislock	GS-16	Federal Bureau of Investigation	State Department

	Grade	From	To
Mather	GS-15	Civil Rights Division	Commission on Education of the Deaf
Schmitz	GS-15	Civil Rights Division	White House
Porter	GM-15	Federal Bureau of Investigation	State Department
Busching	GM-15	Federal Bureau of Investigation	Department of Defense
Simeone	GM-15	Federal Bureau of Investigation	Department of Energy
VanWagenen	GM-15	Federal Bureau of Investigation	Department of Defense
Mislock	GS-16	Federal Bureau of Investigation	State Department

QUESTIONS SUBMITTED BY SENATOR RUDMAN

Criminal Prosecutions

Question: Your budget justification indicates that the criminal litigation program of the United States Attorneys received 93,202 matters during 1987 and closed 90,679 matters.

How many of these matters were closed as a result of a declination?

Answer: The number of criminal matters received and closed were revised in the United States Attorneys' FY 1987 Annual Statistical Report to 86,633 and 84,530, respectively. These numbers were revised subsequent to the Congressional budget submission. Of the 84,530 matters closed, 38,657 were closed as a result of declinations (21,859 immediate and 16,798 later).

Sentencing of Drug Traffickers

Question: The Anti-Drug Abuse Act of 1986 increased the sentences and fines applicable to major drug traffickers. The Act provides for enhanced penalties for repeat offenders and mandatory minimum sentences for certain violations.

Are Federal prosecutors seeking the enhanced penalties and stiffer sentences as intended by Congress?

Answer: The Anti-Drug Abuse Act of 1986 provides more structure in the sentencing of drug offenders based on the quantity of illegal narcotics involved. The enhanced penalties are really not new. Rather the Comprehensive Crime Control Act of 1984 extended enhanced penalties to recidivists not only with previous federal felony convictions but to those with previous State and foreign felony convictions.

We do not currently have any statistical data on sentencing information because prior to 1988, the United States Attorneys' Offices casetracking system did not capture it. A new system to collect such data was implemented during 1987 and should enable us to respond to future requests for such information.

The United States Attorneys' Offices are fully aware of the enhanced penalties applicable to repeat offenders and mandatory minimum sentences provided by the Act. As you know, the new sentencing guidelines also incorporate the theory of enhanced penalties and mandatory minimum sentences. In a November 27, 1987, memorandum, subject: Interim Sentencing Advocacy and Case Sentencing Policy Under New Sentencing Guidelines, then Associate Attorney General Stephen S. Trott, advised all United States

Attorneys that prosecutors "should charge the most serious offense or offenses consistent with the defendant's conduct." The memorandum also states that "government prosecutors are to be as cooperative as legally possible in providing information to probation officers. . ." so that the presentence reports they provide to the Court can be as complete and accurate as possible. The presentence reports contain information on all prior convictions.

An important point to remember, however, is that United States Attorneys' first obligation is to convict the guilty. Prosecutors will always look at the strength of the evidence to determine whether it is strong, fair or weak and will plea bargain accordingly.

General Legal Activities

Allocation of Prosecutorial Resources

Question: The National Drug Policy Board recently issued, in draft form, new drug enforcement strategies. Beginning in 1989 the prosecution strategy calls for the Federal Government to devote 80 percent of its total federal narcotics prosecution resources to target significant national and international targets.

How does this strategy differ from the current use of prosecution resources?

Answer: The prosecution strategy of the National Drug Policy Board differs significantly from the current use of prosecution resources in that it emphasizes proactive identification, investigation and prosecution of priority targets. Currently, significant prosecution resources are devoted to reactive prosecutions.

As envisioned by the prosecution strategy, priority targets will be identified, then law enforcement and prosecution resources will be used in a concentrated and coordinated effort to develop a case. This will allow federal resources to be devoted to those international and multi-district organizations that are beyond the capabilities of State and local law enforcement. State and local resources will be devoted to the reactive types of cases which now are being handled in federal court.

Antitrust Division Staffing

QUESTION: A year ago, the Subcommittee in marking up the 1988 appropriations bill denied the proposed reduction of 100 positions and $2,109,000 for the Antitrust Division. While the agreement on the budget summit forced the Commerce, Justice, State Conferees to take across-the-board cuts, and resulted in a final appropriation of $44,937,000, it did not approve the reduction in the authorized staffing level for the Division. Clearly, however, the final appropriation did not support the authorized staffing level. Your 1989 budget indicates an authorized position level of 549, 116 positions below the 1987 level.

How many staff are on board in the Division at the present time? How does this differ from the on-board staff at the end of 1987?

ANSWER: As of April 23, 1988, the Division had on board 476 full-time-permanent (FTP) personnel and 40 other-than-FTP staff for a total of 516, versus an on-board strength of 501 FTP and 36 other-than-FTP staff, a total of 537 personnel as of the end of 1987. Since indications were that the Division would be required to take the 100 position reduction in 1988, action was taken in the latter part of 1987 to curtail recruitment. This was the preferred choice over the alternative of continued recruitment through the end of 1987 with the possibility of reductions-in-force or furloughs in 1988 if the reduced employment level could not be reached through normal attrition. That is the reason for the small difference between our current employment level and that at the end of 1987.

Sixteen of the referenced 116 positions represented a proposed transfer of function from the Interstate Commerce Commission. This transfer did not occur.

QUESTIONS SUBMITTED BY SENATOR WEICKER

Department of Justice

Office of Justice Assistance

Question: To its credit, the National Institute of Justice conducted a groundbreaking exploratory review of the criminal justice system response to bias crime. The report acknowledges the "widespread and serious nature" of crimes based on race, religion, sexual orientation and ethnicity, and concludes that the "criminal justice system -- like the rest of society -- has not recognized the seriousness of the problem." While a few successful programs to combat bias crime are highlighted in the report, it appears such efforts are relatively few.

Given the magnitude of hate crimes and their serious consequences, how does NIJ plan to foster an adequate official response to the problem?

Answer: The National Institute of Justice has published its 1988 Program Plan, which identifies areas of particular interest within each research program listed. Both the Violent Criminal Behavior and the Victims of Crime research programs included solicitations for research in the areas you suggest. NIJ has received proposals in response to these solicitations; all proposals received will be evaluated in accordance with our standard peer review procedures.

NIJ also is currently considering a proposal from the National Academy of Sciences (NAS) to support a multi-year Panel on Understanding and Controlling Violent Behavior, which would focus principally on issues of criminal violence. This panel would be comparable to other major NAS panels sponsored by NIJ, such as the panels on Criminal Careers, Prediction and Classification, and Sentencing.

Question: Has NIJ considered doing an issues and practices report -- or some other type of follow-up study -- on hate crimes?

Answer: NIJ is currently evaluating the potential for producing an Issues and Practices Report on hate crime. However, the Institute has limited resources, and major portions of the Institute's budget are already committed to research projects on other pressing problems, including Drugs and Crime, Drug Use Forecasting (DUF), Spouse Abuse and Family Violence, and other on-going work in fulfillment of its legislative mandate. Therefore, proposed new projects, such as one on hate crime, must be evaluated against all other potential projects as part of the decision process.

Question: **How will NIJ amplify the conclusions of its exploratory review?**
Answer: The National Institute of Justice has published its 1988 Program Plan, which identifies areas of particular interest within each research program listed. Both the Violent Criminal Behavior and the Victims of Crime research programs address this issue. My previous response also addressed this question.

Question: **The State of Connecticut received $2.4 million in 1987 under the Narcotic Enforcement program created by the 1986 Anti-Drug Abuse Act. In 1988, Connecticut received $800,000. For 1989, the Administration proposes to zero out funding for State and local law enforcement programs. As we all know, State and local law assistance is crucial in the fight against drugs. What is the Administration's position as it relates to State and local law enforcement?**

Answer: The 1989 proposal does not indicate a lessening of concern by the Department for State and local law enforcement programs. In fact, I am a very strong supporter of State and local criminal justice agencies. However, in view of the Balanced Budget and Deficit Control Reaffirmation Act of 1987, many difficult decisions had to be made by both the Congress and Executive Branch. Since funds are limited the Administration must first use available resources to meet the Department's Federal justice responsibilities. If funds are appropriated for State and local grant programs, they are likely to be funded at the expense of the FBI, DEA, INS, the U.S. Attorneys, the Federal Prison System and other vital criminal justice entities. While we strongly support State and local criminal justice agencies, we simply must expect the State and local governments to pay for the cost of State and local services. At the same time, we will continue to provide other direct assistance. In 1989, more than $112 million will be distributed to State and local governments through our Equitable Sharing program. This program, in which assets are seized from drug traffickers and others convicted of crime, will in time more than make up for the present grant programs.

Question: **Every year since the President took office, the Administration consistently has zeroed out funding for the Juvenile Justice and Delinquency Prevention Program. Connecticut receives approximately $100,000 annually which supports shelters for runaway children and provides supportive services for this hard-to-place population.**

In view of the fact that these children are in high-risk groups who can become high-crime individuals, why does the Administration consistently delete funding for this program?

Answer: The Juvenile Justice and Delinquency Prevention Act places authority for the Runaway and Homeless Youth Program in the Department of Health and Human Services.

The Administration supports the program and has recommended a 1989 appropriation level of $26 million.

While juvenile justice is a very important function, the decision to terminate funding is a matter of priorities. Programs and projects must be ranked to ensure that the highest priorities are funded first. Since the Department of Justice is primarily responsible for the Federal civil and criminal justice system, priority must be given to those programs.

QUESTIONS SUBMITTED BY SENATOR DOMENICI

Department of Justice

Tracking Narcotics Cases

Question: Given the sizeable Federal investment being made on drug enforcement and interdiction, it seems extremely important that we not only measure our efforts in terms of the number and quantity of seizures, but in terms of the number of persons arrested, prosecuted and convicted. This information would not only allow us to know if we are adequately handling the increased number of cases being generated but would tell us what kinds of penalties are being exacted against illegal drug users, dealers, and traffickers.

Does the Justice Department currently have a system for tracking not only the cases from Justice enforcement efforts but those cases referred to it by the other Federal law enforcement agencies?

If so, are you able to produce statistical data on the number of persons arrested for illegal narcotics violations, whether the cases were recommended or declined for prosecution, whether there was an indictment and conviction, and what type of sentence the person received? Would you please provide us this information for 1986 and 1987?

Answer: The U.S. Attorneys maintain information by agency on the number of defendant matters received, the number of defendant matters declined, whether a case was filed against a defendant, if a guilty plea was obtained, the number of defendants tried, the number of defendants found guilty and the number of defendants acquitted. Attached are two charts, one for 1986 and one for 1987, depicting the above cited information. Organized Crime Drug Enforcement Task Force Statistics have also been included as a separate attachment.

It is often assumed that most of our cases and, accordingly, defendants come from Federal Bureau of Investigation or Drug Enforcement Administration, i.e., Justice Department investigations. The charts reveal that while indeed a significant portion (approximately 79.7 percent in 1987) do involve participation from these agencies, approximately 20.2 percent of our illegal narcotics violations work comes from other government agencies, including a small, but nonetheless important, portion from State and local agencies.

Another important item to note is that the "defendants received" count for each fiscal year far exceeds the number of matters received; specifically, for 1986 our database indicates that the United States Attorneys' Offices received 10,474 matters which involved a total of

19,931 defendants. Likewise, in 1987 the 12,624 matters received involved 22,092 defendants. As these numbers reveal, one matter may, and often does, involve multiple defendants. Multiple defendant matters require increased hours of attorney time to marshal the evidence and present the case.

Question: The U.S. Customs Service turns the majority of illegal narcotics violators it apprehends over to the DEA. How does the DEA enter these cases into its system and how are they tracked? Is this the same way the DEA handles cases referred to it by other Federal law enforcement agencies?

Answer: Referrals from all other Federal law enforcement agencies, including the U.S. Customs Service, are handled in several different ways. If the referral results in the opening of a DEA investigative file, the case is identified as opened based on a referral in the DEA statistical system. If the referral is part of an ongoing DEA operation, it may not be identified separately as a referral. DEA tracks defendants rather than cases. Upon completion of the judicial process, DEA can identify the dispositions of those defendants whose cases were labeled as referred by another Federal law enforcement agency.

FY 86   TITLE 21 DEFENDANT CASELOAD STATISTICS

AGENCY	MATTER DEF COUNT	IMMED DEF DEC COUNT	LATER DEF DEC COUNT	CASE FILE DEF COUNT	GUILTY PLEAS DEF COUNT	TRIED DEF COUNT	GUILTY VERDICT DEF COUNT	ACQUITAL DEF COUNT	OTHER TERM DEF COUNT
AGRICULTURE	80	10	59	32	22	6	4	2	4
COMMERCE	2	0	1	1	0	1	1	0	0
DEFENSE	192	11	21	147	67	1	1	0	49
EDUCATION	1	0	0	0	0	0	0	0	0
ENERGY	0	0	0	0	0	0	0	0	0
EPA	0	0	0	0	0	0	0	0	0
FED COMMUNICATIONS COMMISSION	0	0	0	0	0	0	0	0	0
FEDERAL TRADE COMM	0	0	0	0	0	0	0	0	0
GSA	7	1	4	5	0	1	0	1	3
HHS	54	2	14	17	13	1	1	0	1
HUD	0	0	0	0	0	0	0	0	0
INTERIOR	131	6	11	98	50	11	11	0	17
JUSTICE	16817	797	2245	12552	7033	1654	1466	188	1151
LABOR	2	0	2	1	0	0	0	0	0
NASA	0	2	0	0	0	0	0	0	0
NATL TRANSPORTATION SAFETY BOARD	0	0	0	0	0	0	0	0	0
POSTAL SERVICE	221	24	40	152	83	20	17	3	8
PUBLIC BLDG SERVICE	2	2	0	0	1	0	0	0	1
STATE DEPT	60	3	12	61	23	1	1	0	5
STATE COUNTY & MUNICIPAL AUTHORITIES	752	32	88	513	316	93	78	15	48
TRANSPORTATION	8	2	1	4	2	3	1	2	0
TREASURY	1237	65	169	862	414	129	117	12	53
VA	25	4	3	17	11	1	0	1	1

FY 86 TITLE 21 DEFENDANT CASELOAD STATISTICS

AGENCY	MATTER DEF COUNT	IMMED DEF DEC COUNT	LATER DEF DEC COUNT	CASE FILE DEF COUNT	GUILTY PLEAS DEF COUNT	TRIED DEF COUNT	GUILTY VERDICT DEF COUNT	ACQUITAL DEF COUNT	OTHER TERM DEF COUNT
VIRGIN ISLANDS (LOCAL)	13	0	0	13	3	2	1	1	4
WASHINGTON DC (LOCAL)	231	2	1	162	126	13	12	1	12
OTHER	96	10	5	61	39	12	11	1	7
TOTAL	19,931	973	2,676	14,698	8,203	1,949	1,722	227	1,364

FY 87 TITLE 21 DEFENDANT CASELOAD STATISTICS

AGENCY	MATTER DEF COUNT	IMMED DEF DEC COUNT	LATER DEF DEC COUNT	CASE FILE DEF COUNT	GUILTY PLEAS DEF COUNT	TRIED DEF COUNT	GUILTY VERDICT DEF COUNT	ACQUITAL DEF COUNT	OTHER TERM DEF COUNT
AGRICULTURE	69	4	49	36	37	2	2	0	11
COMMERCE	0	0	0	1	2	0	0	0	0
DEFENSE	152	10	18	119	49	8	7	1	30
EDUCATION	0	0	0	0	1	0	0	0	0
ENERGY	1	0	1	0	0	0	0	0	0
EPA	0	1	0	0	0	0	0	0	0
FED COMMUNICATIONS COMMISSION	0	1	0	0	0	0	0	0	0
FEDERAL TRADE COMM	0	1	0	0	0	0	0	0	0
GSA	7	1	0	6	2	0	0	0	1
HHS	50	2	21	36	18	3	2	1	5
HUD	0	0	0	0	0	0	0	0	0
INTERIOR	258	19	12	250	118	27	23	4	20
JUSTICE	17621	534	2662	12576	8618	2036	1806	230	1283
LABOR	0	4	0	1	0	2	1	1	0
NASA	0	1	0	0	0	0	0	0	0
NATL TRANSPORTATION SAFETY BOARD	0	0	0	0	0	0	0	0	0
POSTAL SERVICE	283	13	62	152	117	19	12	7	10
PUBLIC BLDG SERVICE	0	1	2	0	0	0	0	0	0
STATE DEPT	30	0	1	18	22	8	5	3	3
STATE COUNTY & MUNICIPAL AUTHORITIES	1144	25	137	733	421	70	58	12	60
TRANSPORTATION	8	0	5	7	4	1	1	0	2
TREASURY	1901	38	257	977	541	258	231	27	108
VA	12	4	4	8	4	2	2	0	3

FY 87 TITLE 21 DEFENDANT CASELOAD STATISTICS

AGENCY	MATTER DEF COUNT	IMMED DEF DEC COUNT	LATER DEF DEC COUNT	CASE FILE DEF COUNT	GUILTY PLEAS DEF COUNT	TRIED DEF COUNT	GUILTY VERDICT DEF COUNT	ACQUITAL DEF COUNT	OTHER TERM DEF COUNT
VIRGIN ISLANDS (LOCAL)	13	59	0	13	12	6	4	2	13
WASHINGTON DC (LOCAL)	292	2	2	289	88	22	17	5	27
OTHER	251	12	76	226	165	13	13	0	32
TOTAL	22,092	732	3,309	15,448	10,217	2,477	2,184	293	1,608

ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES
STATISTICS AS OF 12-31-87
(FOR CALENDAR YEAR 1987)

	NUMBER OF DEFENDANTS CONVICTED	DISMISSALS	ACQUITTALS	SEIZURES		FORFEITURES	
				CASH	PROPERTY	CASH	PROPERTY
Florida/Caribbean	136	34	4	$18,727,677	$49,311,373	$ 292,483	$ 2,404,500
Great Lakes	303	13	5	6,866,959	2,772,725	311,804	2,006,100
Gulf Coast	198	2	5	14,033,201	8,428,743	3,649,263	1,654,685
L.A.-Nevada	81	2	0	18,843,455	4,938,352	4,142,140	7,222,476
Mid-Atlantic	559	37	9	2,838,218	9,851,511	54,300	265,700
Mountain States	170	9	4	743,493	1,716,611	517,738	636,800
New England	81	0	1	360,875	5,959,036	340,000	2,948,640
N.Y.-N.J.	236	10	12	2,925,651	1,980,752	418,302	57,400
North Central	211	10	1	2,760,996	2,594,111	1,333,800	1,456,631
Northwest	62	13	0	1,481,524	197,159	1,881,211	1,040,771
South Central	56	11	1	60,194	2,586,280	- 0 -	577,280
Southeast	171	23	11	273,788	7,840,425	145,756	963,000
Southwest	65	26	5	5,546,108	10,039,076	99,315	52,550
TOTALS	2,329	190	58	$75,462,139	$108,216,154	$13,186,112	$21,286,533

ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES
STATISTICS AS OF 12-31-87
(FOR CALENDAR YEAR 1987)

REGION	NUMBER OF DEFENDANTS CHARGED WITH RICO	NUMBER OF DEFENDANTS CHARGED WITH CCE	NUMBER OF DEFENDANTS CHARGED WITH TITLE 26, TAX VIOLATIONS	NUMBER OF DEFENDANTS CHARGED WITH TITLE 31 VIOLATIONS	NUMBER OF DEFENDANTS CHARGED WITH TITLE 18/26 FIREARMS VIOLATIONS
Florida/Caribbean	70	23	11	32	18
Great Lakes	112	13	30	1	2
Gulf Coast	0	33	4	9	7
L.A.-Nevada	4	12	67	65	11
Mid-Atlantic	5	23	19	4	19
Mountain States	0	3	20	6	20
New England	25	10	28	2	3
N.Y.-N.J.	20	1	7	7	4
North Central	1	3	5	22	3
Northwest	3	5	7	0	10
South Central	0	11	3	1	6
Southeast	2	9	7	3	38
Southwest	0	23	3	10	11
TOTALS	242	169	211	162	152

ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES
STATISTICS AS OF 12-31-87
(FOR CALENDAR YEAR 1987)

NUMBER OF INDICTMENTS INVOLVING THE FOLLOWING:

REGION	COCAINE	HEROIN	MARIJUANA	OTHER DRUG	NON-DRUG */
Florida/Caribbean	38	0	5	0	38
Great Lakes	105	5	23	13	18
Gulf Coast	25	1	19	6	8
L.A.-Nevada	78	9	9	6	2
Mid-Atlantic	63	25	51	9	15
Mountain States	54	12	10	5	27
New England	44	7	4	0	9
N.Y.-N.J.	36	9	8	2	16
North Central	45	7	20	3	17
Northwest	66	0	6	14	0
South Central	40	2	15	23	6
Southeast	51	2	36	8	35
Southwest	13	2	11	5	3
TOTALS	658	81	217	94	194

---

*/ This category includes only those indictments which do not allege any drug offenses. These indictments are primarily the result of money laundering investigations and allege financial offenses.

ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES
STATISTICS AS OF 12-31-87
(FOR CALENDAR YEAR 1987)

REGION	NUMBER OF TASK FORCE CASES INITIATED	NUMBER OF CASES IN WHICH INDICTMENTS RETURNED	INDICTMENTS RETURNED	NUMBER OF DEFENDANTS INDICTED
Florida/Caribbean	37	46	81	333
Great Lakes	31	34	148	478
Gulf Coast	50	53	82	334
L.A.-Nevada	35	37	67	251
Mid-Atlantic	25	22	183	412
Mountain States	21	62	77	195
New England	36	70	88	207
N.Y.-N.J.	51	28	72	158
North Central	27	21	82	235
Northwest	21	35	34	120
South Central	17	16	69	185
Southeast	38	60	115	280
Southwest	23	17	38	221
TOTALS	412	501	1,136	3,409

BUREAU OF PRISONS

STATEMENT OF J. MICHAEL QUINLAN, DIRECTOR, BUREAU OF PRISONS

INCREASE IN PRISON CONSTRUCTION

Senator HOLLINGS. What can this committee do, Mr. Quinlan, to help you do your job?

Mr. QUINLAN. Senator, if the committee would support the President's request for additional prison construction it would help us greatly to alleviate the overcrowding problem in the Bureau of Prisons, which currently is 62 percent over rated capacity.

Senator HOLLINGS. Construction facilities are in bad need?

Mr. QUINLAN. In very bad need, Senator.

Senator HOLLINGS. As you know, we worked with you and Mr. Norman Carlson over the years. We have been turning Olympic camps, Army camps and everything else into prison containment facilities, and we will continue to do so. I mentioned the Specter Amendment, which we support, will add more money for the prisons this year. I understand that you need money in the southeast, and you are looking at the great State of South Carolina, is that correct?

Mr. QUINLAN. Yes, Senator, we are. One of the principal areas that we are concerned about building facilities is in the southeast. We are delighted to look at any State in that area, particularly in South Carolina, an area where we have not yet had success in locating a prison.

[The prepared statement of Mr. Quinlan, and the submitted questions for the record follow:]

DEPARTMENT OF JUSTICE

STATEMENT OF THE DIRECTOR, FEDERAL BUREAU OF PRISONS
J. MICHAEL QUINLAN

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to discuss the Federal Bureau of Prisons' 1989 budget request. As you will note, our request totals $1,380,084,000 and 15,490 appropriated positions, an increase of $449,004,000 and 3,560 positions above the 1988 enacted level. Our budget also includes a request for $20 million in borrowing authority for Federal Prison Industries, Inc. The majority of these increases are specifically directed at the continued expansion of our prison capacity. It is essential for us to keep pace with the projected growth in the inmate population and, at the same time, reduce what has become a critical level of overcrowding in the Federal Prison System.

Inmate Population Growth/Projections

Mr. Chairman, the Federal inmate population is now approaching 44,000, nearly 2,000 higher than when we last appeared before this Subcommittee. To review with you for a moment, our inmate population has increased by over 20,000 inmates or 85 percent in the past seven years. This growth is concrete evidence of the success of Federal law enforcement activities, particularly those directed at drug trafficking. The percentage of the total Federal inmate population incarcerated for drug offenses has been steadily rising. In 1981, it was 25 percent, today it stands at 40 percent and we anticipate that it will continue to increase.

While the capacity of our prison system has also grown since 1981, it is clearly insufficient to meet both future population increases and reduce overcrowding. The loss of approximately 2,400 bedspaces as a result of the Cuban disturbances has placed additional pressures on us and overcrowding currently stands at 60 percent system-wide, that is, the inmate population is at 160 percent of the institutions' rated capacities.

While it is impossible to predict future Federal inmate population with precision, I believe we all are in agreement that it will continue to increase.

Our 1989 budget projects that inmate population will increase to 50,378 in 1989 and will reach at least 71,892 by 1995. This revision from last year's projections takes into account our continuing assessment of the impact of the Anti-Drug Abuse Act of 1986, but does not take into account the new sentencing guidelines developed by the U.S. Sentencing Commission. Incidently, the Sentencing Commission has estimated that the inmate population will reach between 78,000 and 125,000 by 1997. Consequently, we believe that our population projections are conservative and reflect the minimum level of growth that will occur.

Progress in Reducing Prison Overcrowding

We firmly believe that current prison overcrowding coupled with a substantial growth in the prison population will create a major crisis in the Federal criminal justice system unless we continue and accelerate our facilities expansion program. The prison construction plan presented for 1989 through 1993 will reduce prison overcrowding to 20 percent by 1995 under current inmate population projections.

As you know, Mr. Chairman, this expansion program is well underway. We have already added some 4,500 new prison beds since 1981. With the continued support of Congress, funding has already been provided for approximately 8,600 additional beds. Our 1989 budget includes funding which will bring "on-line" 6,520 beds. Four new Federal Correctional Institutions in Oregon, Pennsylvania, Georgia and New Jersey, and new housing units at eleven existing institutions are scheduled for activation in 1989.

Our budget also addresses another problem related to overcrowding by requesting 1,602 additional positions which will be allocated to critically understaffed functions at existing institutions.

Plans for Capacity Expansion in 1989

Our 1989 budget requests funds to construct seven new prisons and expand capacity at several existing institutions. Together with the proposed pilot for a privately managed minimum security facility and the proposal to lease three

Federal Correctional Institutions, our 1989 request for additional prison capacity would provide for an eventual increase of 7,800 beds.

Mr. Chairman, I recognize that the prison expansion program required to meet our objectives is an undertaking of substantial dimensions, both in terms of human and financial resources. It is equally clear that failure to achieve this objective can result in prison overcrowding that could seriously jeopardize the life and safety of Bureau of Prisons staff and inmates. This type of a crisis could quickly lead to "gridlock" in the Federal criminal justice system, inviting court intervention and the establishment of prison population "caps", a situation which has occurred in several state correctional systems.

I want to assure you and the members of this Subcommittee that we will meet our mission in the most cost-effective manner possible. We continue to make maximum use of half-way houses, contract detention and other community options, and to expand capacity at existing institutions where possible. However, it is clear to me that public safety dictates that most of our expansion needs will require construction of new Federal prison facilities.

The Bureau of Prisons has taken several actions to insure that new prison construction is as cost effective as possible. These actions include the use of Federal surplus property, the donation of land to the government at no cost and the use of already proven prison designs and new construction techniques.

Another area of prison system expansion which has proved cost effective for us is the use of military facilities. Several current Bureau of Prisons facilities are located on former military bases and three of our minimum security Federal Prison Camps operate on active bases with outstanding success. We are now negotiating to co-locate minimum security prison camps at three other active military bases and are hopeful that we can expand these cooperative arrangements.

Privatization in Federal Corrections

Before turning to the details of our 1989 request Mr. Chairman, I want to discuss briefly three "privatization" initiatives which may be of specific interest to the Subcommittee.

Privatization of corrections raises important legal, administrative, cost and quality of services issues and deserves careful analysis and exploration. We do not believe that private detention companies can or should replace our current Federal Prison System. Rather, we want to determine if the private sector offers a valid and cost effective option to assist the Bureau of Prisons in meeting the projected growth in the inmate population. The proposal to conduct a "pilot" project with a private sector firm to manage, staff and operate a 500-bed minimum security Federal Prison Camp will provide useful information in this regard.

A second "pilot" would be undertaken by Federal Prison Industries, contracting with a private firm to manage and supervise the entire operation of one prison factory.

The third privatization proposal is to begin a prison leasing program. Under this type of program, which has been successfully implemented in several states, prisons would be constructed with private resources, leased on an annual basis and staffed and managed by the Bureau of Prisons. A combined program of direct construction appropriations and prison leasing can substantially reduce the outlays required in our expansion program over the next five years. This approach supports the goal of deficit reduction within the time frames of Gramm-Rudman-Hollings. The 1989 budget requests leasing authority for the Bureau of Prisons and proposes that three medium security Federal Correctional Institutions be developed in this manner.

Mr. Chairman, I would now like to summarize, briefly, the specific increases we are requesting in 1989.

Salaries and Expenses

For the Salaries and Expenses appropriation we are requesting $933,709,000 and 15,258 positions, increases of $213,895,000 and 3,498 positions above the

1988 enacted levels. These include program increases of $162.5 million and 3,408 positions and uncontrollable and other adjustments for a net increase of $51.4 million and 90 positions.

The Federal Correctional Institutions in Sheridan, Oregon; Bradford, Pennsylvania; Jesup, Georgia and Fairton, New Jersey, are scheduled to open in 1989. Resources totaling $39.5 million and 989 positions will be required to staff and operate these new facilities in 1989. Also scheduled for completion and activation in 1989 are capacity expansion projects at eleven existing institutions. To furnish, equip and staff these new housing units will require $30.1 million and 327 positions.

In addition, the Bureau is currently negotiating to acquire two former educational facilities in South Dakota and Texas for conversion to minimum security institutions and to co-locate Federal Prison Camps at three active military bases. We are optimistic about successfully concluding these negotiations and converting these facilities to Federal Prison Camps this fiscal year. We are requesting $32.4 million and 490 positions to staff and equip these five facilities which will provide 2,000 new prison beds in a highly cost effective manner.

We are requesting $18 million to support a projected increase of 3,882 in the inmate population in 1989, from 46,496 to 50,378. As I noted earlier, these estimates have been revised from last year to reflect our current assessment of the impact of the 1986 Anti-Drug Abuse Act.

This population estimate for 1989 reflects an offset in institution-based population based on our request of $5.1 million to expand the use of community treatment centers by 725 for an average daily population of 4,500 offenders. In addition, we are requesting $2.8 million for six months operation of the "pilot" project with a private sector firm to manage, staff and operate a 500-bed minimum security Federal Prison Camp. Our funding request is only an estimate at this time and we plan to use full competitive procurement procedures for this contract.

During the past seven years, the Bureau of Prisons' basic workload input, Federal inmates, has increased by 85 percent while staffing levels have grown only about 28 percent, the majority associated with the activation of new prisons. It is unrealistic to expect that staff can continue to achieve this level of productivity given the current level of institution overcrowding. We are requesting $32.9 million in 1989 for an additional 1,602 positions, most of which will be assigned to critically understaffed institutions where the workload has grown directly in proportion to the increase in inmates. This seemingly large increase in staffing should be tempered by consideration of the fact that our facilities are staffed twenty-four hours per day, 365 days a year. To keep one correctional officer post staffed at all times requires 4.2 positions on an annual basis.

Finally, we are requesting $1.6 million to finance increased use of SENTRY, our inmate management information system, due to the increased inmate population. The estimate is based on projected billings from the Department's Justice Data Center.

Buildings and Facilities

We are requesting $436,554,000 and 191 positions for the Buildings and Facilities appropriation in 1989. Of this amount, $360,150,000 is requested to continue the expansion of Federal Prison System capacity. This includes construction of three medium security Federal Correctional Institutions; one maximum security Federal Penitentiary; and two Federal Detention Centers, one to be located in Puerto Rico and one to be located in the northeastern United States. The Bureau also plans to acquire property for conversion to a 500-bed Federal Prison Camp. In addition, we are planning to build new housing units at seven existing institutions.

No funds are requested or required at this time for the proposal I mentioned earlier to lease three Federal Correctional Institutions. However, we have requested a language change to authorize the Bureau to lease correctional facilities. We project that annual lease payments would commence in 1991 or 1992 when we take beneficial occupancy of the new prisons.

When activated, all of these projects will provide an additional 7,800 critically needed beds for the Federal Prison System.

We are also requesting $31.7 million to continue the modernization of the U.S. Penitentiaries at Leavenworth, Kansas and Atlanta, Georgia and to begin modernization of the U.S. Penitentiary at Lewisburg, Pennsylvania. To continue our efforts to bring all institutions into compliance with the Life Safety code, we are requesting $11.6 million to accomplish fire safety improvements at ten institutions and to determine the type and quantity of hazardous wastes required to be removed at eight institutions in compliance with the Comprehensive Environmental Response Compensation and Liability Act of 1980.

In order to more equitably distribute the current overcrowding between Security Level 1 institutions and Security Level 2 institutions, we are requesting $9 million to upgrade the institutions at Fort Worth, Texas and Loretto, Pennsylvania, to Security Level 2 and to expand the Security Level 1 Federal Prison Camp at Big Spring, Texas by 400 beds.

Finally, we are requesting $8.6 million to accomplish essential plant renovations and repairs at fourteen institutions. These include rehabilitation of primary electrical systems; renovation of food services facilities and building exteriors; replacement of locking systems, deteriorated security wire, roofing and windows; and other critical facilities improvements.

Federal Prison Industries, Inc.

Mr. Chairman, I would like to comment briefly on the critical importance of Federal Prison Industries to our operations. There are now over 14,300 inmates employed in a variety of industrial operations in 78 factories, some of which have installed second and third work shifts to employ more inmates. While Federal Prison Industries is a business, it is also a vital correctional program. The ability to keep increasing numbers of inmates employed and productive has played an extremely important role in managing institutional overcrowding.

Since 1983, the Corporation has reinvested $73.7 million in profits from sales to expand, add and improve facilities and equipment and introduce new product lines. This investment has enabled the Corporation to expand significantly, the number, variety and quality of inmate work opportunities. Federal Prison Industries has also increased the number of vocational training programs, and conducted a variety of experimental work/training programs.

As the growth in inmate population accelerates over the next few years, the Corporation, like any other business, will not be able to accomplish the required scale of physical plant expansion solely from retained earnings. Consequently, the Administration has proposed legislation to authorize Federal Prison Industries to borrow up to $20 million from the U.S. Treasury to finance factory construction and the purchase of major capital equipment. Enactment of this legislation is critical to the future operations of the Corporation.

For 1989, Federal Prison Industries is requesting 173 additional staff for supervision of an estimated 18,000 inmates, and for managing new and expanded factory operations.

National Institute of Corrections

Finally, Mr. Chairman, I want to note that the National Institute of Corrections continues its role as an important force for improvements in state and local correctional agencies through its training and technical assistance services. The Institute's National Academy of Corrections has trained thousands of correctional officers and administrators from all over the nation. The Institute has retained its effectiveness partly because it has remained small and is able to respond directly and promptly to state and local needs.

For 1989 we are requesting $9,821,000 and 41 positions for the Institute. The increase of $231,000 is required solely to cover the Institute's uncontrollable increases.

This concludes my prepared statement, Mr. Chairman and I would be pleased to answer any questions you or your colleagues may have.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

1989 Budget Increase

Question: The 1989 budget requests $1.4 billion for the Federal Prison System. How much of this $449 million or 48.2 percent increase over 1988 is a direct result of drug enforcement efforts?

Answer: Of the total $449 million increase requested in 1989, $329 million is a continuation of and directly related to the Bureau of Prisons' facilities expansion program: $102.1 million for activating newly constructed facilities and $226.9 million for construction of new prisons. The objective of this expansion is to keep pace with the anticipated growth in the Federal inmate population and, at the same time, reduce the critical level of prison overcrowding to 20 percent by 1995. More than half of the 20,000 increase in the inmate population since 1981 can be attributed directly to drug enforcement efforts. So it is fair to say that drug enforcement efforts contribute to a large portion of the increase requested in 1989.

Federal Prison System Overcrowding

Question: I have noted that overcrowding in Federal prisons continues to increase and that your current inmate population is at approximately 162 percent of our prison system's total design capacity. How dangerous is the current situation and what could happen if this overcrowding continues to increase?

Answer: We believe the current level of overcrowding in the Federal Prison System is extremely critical and that the Federal Government needs to make a commitment to substantially increase capacity in the Federal Prison System. Prison overcrowding increases the potential for inmate idleness, inmate violence and inmate litigation. It has been judged as a major contributing factor in some of the worst State prison disturbances. With the exception of the Cuban disturbances at Atlanta and Oakdale last November, the Federal Bureau of Prisons has been fortunate in dealing with prison overcrowding. This is largely a tribute to our dedicated staff and our ability to employ a large number of inmates in industrial programs.

If permitted to continue to increase, prison overcrowding would seriously jeopardize the life and safety of Bureau of Prisons staff and inmates and could quickly lead to a "gridlock" in the Federal criminal justice system. The Federal courts could be expected to intervene and might establish prison population "caps", a situation which has occurred in numerous State correctional systems, some for which overcrowding was not nearly so severe as it is currently in the Federal System. If this were to occur, the only available option would be to significantly reduce criminal investigations and prosecutions and/or require the Federal Government to release prisoners earlier than current policies and common sense dictate. This would seriously compromise our ability to fight crime at the Federal level and could threaten the safety of our citizens. We consider these alternatives unacceptable.

Question: In 1970, 16 percent of inmates in the Federal Prison System were incarcerated for drug law violations. By 1987, 37 percent were imprisoned for such violations. What is the Bureau of Prisons estimate of the inmate population incarcerated for drug violations in 1989?

Answer: We project that the number of sentenced offenders incarcerated for drug violations will surpass 40 percent of the total sentenced inmate population in 1989.

BOP Facilities Expansion Plans

Question: What is the current status of the Bureau of Prisons' facilities expansion program and what are the long term objectives for this program?

Answer: To keep pace with the anticipated growth in the Federal inmate population and, at the same time, reduce the critical level of overcrowding, we are involved in the largest expansion program in the history of the Bureau of Prisons. Our objective is to reduce Federal prison overcrowding to a level of 20 percent by 1995.

As you know, this expansion is well underway. We have already brought on-line some 4,500 new prison beds since 1981. In addition, with the continued support of the Congress, funding has been provided for approximately 8,600 additional beds. We also have identified six properties (two closed educational facilities and four active military bases), which through acquisition and/or lease and conversion this year, could provide an additional 2,150 minimum security beds.

Our 1989 budget requests resources to construct seven new prisons and expand capacity at several existing institutions. Authority is also requested to enter into lease agreements for three medium security facilities. These institutions would be financed and constructed with private resources and leased on an annual basis and staffed and managed by the Bureau of Prisons. Taken together, these requests would provide for an eventual capacity increase of 7,800 beds.

Our multi-year expansion plans reflected in the 1989 budget show a need for 14,650 additional beds from 1990 to 1995 to reduce prison overcrowding to 20 percent by 1995. This projection is based on an estimated inmate population of 71,892 offenders by 1995. We currently estimate that this capacity expansion will require an investment in construction of approximately $1.1 billion.

Other High Priority Increases

Question: The majority of the budget increase for the Bureau of Prisons is directed at constructing and activating new prisons. Are there any other areas of the Federal Prison System request which are critical and of high priority?

Answer: Certainly additional funding to support the projected inmate population increase, to expand contract confinement which diverts offenders away from institutions, to modernize the antiquated penitentiaries, and to accomplish fire safety, environmental and other essential plant improvements, all are important increases. Perhaps the most important increase of all is the request for an additional 1,602 positions, most of which we will assign to the critically understaffed existing institutions. Since 1981, the Federal inmate population has grown by 85 percent while staffing levels have increased only about 28 percent, the majority associated with the activation of new prisons. This request will permit modest but much deserved staff increases among the severely overcrowded institutions.

Privatization in Federal Corrections

Question: The budget request refers to three different "prison privatization" projects. Would you please expand on your plans in this area?

Answer: One proposal is to contract with a private-sector firm to manage, staff and operate a 500-bed minimum security Federal Prison Camp. A second proposal is to begin a prison leasing program. Under this type of program, which has been successfully implemented in several States, prisons would be constructed with private resources, leased on an annual basis and staffed and managed by the Bureau of Prisons. The third proposal is to contract with a private firm to manage and supervise the entire operation of one prison factory.

Use of Military Facilities for Prisons

Question: I recognize that new medium and maximum security prisons must be constructed. It appears, however, that minimum security prisons can be located on military bases in a very cost-effective manner such as the Federal Prison Camps at the Eglin, Florida and Montgomery, Alabama Air Force Bases. Are you continuing your efforts with the military in this regard?

Answer: One of our highest priorities is the acquisition and conversion of surplus existing facilities for use as minimum security Federal Prison Camps. These facilities are cost effective and can be brought on-line very quickly.

We have an excellent ongoing relationship with the Air Force. We recently activated a camp at Tyndall Air Force Base near Panama City, Florida, and are currently looking very closely at Lowry Air Force Base in Denver, Colorado and George Air Force Base in Victorville, California. We have also initiated discussions with the Army and Navy.

In an austere budget climate, the relationship is beneficial to both us and the military. The Bureau of Prisons avoids the costly construction of a new facility and the military base gets the services of inmate workers for their facilities.

Community Acceptance of Federal Prisons

Question: The 1989 budget requests authority to construct or lease a total of ten new prisons. Considering the number of new prisons which you currently have under construction, are there really that many communities that want prisons which would permit you to move ahead in a prompt manner?

Answer: Yes there are. Actually, this is not nearly the problem it was several years ago. Currently we are looking at quite a few sites where the communities are anxious for us to locate. This change occurred for a number of reasons. Local communities have come to realize the substantial economic benefits that can accrue, both in the short and long term. The initial development and construction investment of $40 to $50 million typically involves local contractors who employ workers from the local community and procure construction supplies and materials from local vendors.

When construction of the facility is completed, staff are required to manage and operate the institution. Typically, about 60 percent of the total staffing requirement (usually 225 to 250 employees) is filled by local applicants. Bureau of Prisons employees assigned to the new facility will require local housing. In addition to an annual payroll of nearly $6 million for the local facility, another $5 million would be spent, much of it locally, to obtain the goods and services necessary to operate the facility.

One of the major problems in the past, community anxiety over property values with a prison "next door", has diminished substantially because experience has demonstrated that property values eventually do not decline, but rather, remain stable or increase. Many community leaders today provide strong support for a Federal prison because they view it as a recession-proof, non-polluting industry. Finally, the communities appreciate the fact that the Bureau of Prisons is a well-managed organization and strives to be a good neighbor.

Atlanta/Oakdale Riots

Question: The Cuban riots at Atlanta and Oakdale make us all too aware of the serious and sometimes dangerous challenges that confront the Bureau of Prisons. While the disturbances were resolved without serious injury to hostages, the destruction to the Bureau of Prisons' property was extensive.

Would you please advise us of the current location and status of the Cubans and the present plans to fund the costs resulting from the Atlanta and Oakdale prison riots.

Answer: The remaining Atlanta and Oakdale Cubans have been relocated among 31 other Federal prisons with appropriately secure facilities with nearly 50 percent presently incarcerated in the penitentiaries at Lewisburg, Pennsylvania; Leavenworth, Kansas; and Lompoc, California; and in the detention facility at Englewood, Colorado.

Since January, 537 of the Cubans have been released to halfway houses or direct community placement. An initial group numbering 14 has been designated for repatriation to Cuba. The remaining cases have been or are being reviewed for determination of status by the Immigration and Naturalization Service.

Regarding our plans to fund the unbudgeted costs of the disturbances, this is proceeding on two tracks. First, the reconstruction of Atlanta and Oakdale will cost approximately $49.4 million (Atlanta - $33.7, Oakdale - $15.7). The Congress has recently approved our reprogramming of already appropriated prison construction funds for the purpose of the Atlanta/Oakdale reconstruction.

The impact of the disturbances on our regular Salaries and Expenses operation budget is $42.6 million. This cost results from such items as destroyed supplies and equipment, overtime, inmate relocation and reimbursement to State and local law enforcement agencies. One major item is a substantial increase in placement of American inmates in State systems on a contract basis to make room for the 2,400 Cubans that were transferred to other Federal prisons.

Pending before the Subcommittee is a 1988 supplemental in the amount of $42.6 million for these purposes to be derived by a transfer of $39.3 million from funds already appropriated in the Buildings and Facilities appropriation and $3.3 million from the FBI. This supplemental is essential in order for us to avoid being deficient at the end of 1988.

The $39.3 million in construction funds proposed for transfer and the $49.4 million recently reprogrammed will be restored in 1989 by the Attorney General through a transfer from the Assets Forfeiture Fund.

QUESTIONS SUBMITTED BY SENATOR BUMPERS

Proposed Special Facility for Aged Prisoners

Question: Several constituents in my State, particularly those in Lafayette County, have expressed an interest in a pilot project that would create a special Federal correctional institution for elderly inmates. It is believed that such an institution could fulfill Federal needs to relieve prison overcrowding, while providing a more humane environment for our nation's elderly inmates. This idea seems very reasonable to me.

There is no such facility now, is that correct? Has the Bureau of Prisons considered a special facility for elderly inmates? How many inmates are there at present who are, say, over 60 years of age? Are most of these minimum security inmates? Where are they presently housed? Is there any special consideration of the needs of elderly inmates in these institutions? Is the Bureau interested in a pilot project along these lines?

Answer: The Bureau of Prisons currently has no special facility, per se, for elderly inmates. Philosophically, our view has been that the more humane approach is, where possible, to locate the elderly inmate as close to home and family as possible and in a more "normalized" heterogeneous environment, as opposed to isolating the elderly in specific facilities for the "old-aged". Obviously, this approach is not always possible where the elderly inmate is geriatric and requires nursing care. Such inmates are confined at the Bureau's medical referral centers such as the Medical Center for Federal Prisoners, Springfield, Missouri; the Federal Medical Center, Rochester, Minnesota; and centers at the Federal Correctional Institutions at Fort Worth, Texas, Terminal Island, California and Lexington, Kentucky.

Currently there are 1,245 inmates sixty or more years of age located in 47 Bureau institutions and another 124 in contract facilities. Most of these inmates, 782, are classified as security level 1 and 2 inmates. For purposes of defining geriatric inmates, the Bureau considers as geriatric, those inmates age 50 and over who meet one or more of the following criteria:

a. No-duty status (permanent no-work status, multiple health problems, recuperation from surgery)
b. Limited duty
c. Requiring chronic care (paraplegics, cardiac cases, diabetics, wheelchair cases)
d. Diabetic I (history of diabetes, controlled by diet)
c. Diabetic II (diet, oral medication diabetic)
f. Diabetic III (insulin dependent, diet, and/or oral medications)
g. C.O.L.D (chronic obstructive lung disease)
h. Cardiac (history of cardiac disease, routine follow-up)
i. Cardiac II (history with frequent follow-up)

Of the total 4,700 age 50 and over inmate population, 2,037 are considered geriatric. The Bureau does give special consideration to elderly inmates including work and housing assignments and special medical and dietary care. While the Bureau is able to accommodate the geriatric population within our existing facilities, we are reevaluating our needs and costs in this area.

Reprogramming Request

Question: I understand there will be a reprogramming request coming up to the Subcommittee requesting funds to repair the damage to the Oakdale, Louisiana, and Atlanta, Georgia, facilities following the riots last year by Cuban detainees. Can you describe that reprogramming request in detail for us now?

Answer: The reprogramming involves the movement of $49.4 million available within the Buildings and Facilities appropriation from unobligated balances for two new Federal Correctional Institutions to accomplish the reconstruction of the U.S. Penitentiary in Atlanta and the Oakdale Federal Detention Center, damaged during the Mariel Cuban disturbances last year. The reprogramming will not adversely affect the two new construction projects because most of the obligations will not occur until 1989. We anticipate that the $49.4 million will be restored to the Buildings and Facilities appropriation in 1989 through a transfer from the Assets Forfeiture Fund.

In addition, the reprogramming earmarks $7 million to permit the Bureau of Prisons to upgrade the security level of two facilities and increase the capacity of a third facility to more equitably distribute the critical overcrowding among Bureau facilities. Another $9.8 million would be used to acquire and convert five properties for use as minimum security prisons, providing an additional 2,000 critically needed beds.

QUESTIONS SUBMITTED BY SENATOR RUDMAN

Bureau of Prisons Supplemental

Question: The Bureau of Prisons is requesting $42.6 million to provide inmate care and custody and contract confinement during 1988. This request is the result of increased costs incurred by BOP during the Atlanta and Oakdale prison riots in late December.

What would be the impact on the Bureau of Prisons if Congress fails to provide these resources?

Answer: A large portion of the costs covered by the supplemental request, for example, overtime, travel and per diem compensation during the riots; reimbursement to State and local law enforcement agencies and U.S. Army support; inmate relocation costs; costs to lease Fort Polk and Fort Gordon; and contract confinement costs, has already been incurred and funds expended. The remainder is required to cover the estimated costs related to the riots for the balance of this fiscal year.

If the Congress fails to approve the supplemental request, the appropriation Salaries and Expenses, Bureau of Prisons will become deficient during the current fiscal year. Any measures to absorb costs of this magnitude would be so extreme as to seriously jeopardize the lives of staff, inmates and the community at large.

Question: Could this request be classified as a dire emergency under the terms of the Budget Summit Agreement?

Answer: The Department's view is that rioting inmates destroying prison facilities and threatening the lives of civilian hostages surely constitutes a dire emergency. Nevertheless, the Administration has not formally designated the request as a "dire emergency" for the purposes of the Budget Summit Agreement.

Federal Prison Industries

Question: Recently the Federal Prison Industries has come under criticism from small businesses and particularly from those involved in furniture production, for its increased sales to the government procurement market.

What steps are being taken to ensure that Prison Industries sales do not result in unfair competition to small businesses trying to sell their product to government agencies?

Answer: Federal Prison Industries (UNICOR) Corporate Management is acutely aware of the Corporation's legal responsibility to avoid becoming an undue burden of competition to any segment of the private sector. The founding legislation for Federal Prison Industries also stipulates that it should provide employment for all physically fit inmates with the direction to prepare those inmates for trades and occupations they might obtain once released from prison. To avoid becoming an undue burden of competition, UNICOR continually attempts to diversify its product lines so that it now manufactures over 200 different products. The Corporation has product development centers for each of its major product divisions to ensure that the product diversification process continues.

When UNICOR receives a complaint, directly or indirectly, from a private sector company, product and/or marketing division staff investigate that complaint and recommend to UNICOR Corporate Management whether it should continue, reduce, or eliminate a particular product line.

Prior to introducing a new product line, the UNICOR marketing division conducts a thorough market analysis to determine the likely impact of that product line on small businesses in particular. If that projected impact is determined to be unduly adverse to small business, UNICOR Corporate Management will not introduce the particular product in question. Furthermore, major product line decisions, such as whether to introduce a new product line, are also referred to the UNICOR Board of Directors for their approval.

Question: Legislation has been recently introduced in the House of Representatives to require Federal Prison Industries to compete on the same basis as small business for government procurement contracts. What would be the impact of such legislation on the Bureau of Prisons?

Answer: H.R. 3526, entitled the "Prison Industries Reform Act of 1987," introduced by Congressman Sensenbrenner on October 21, 1987, would remove the mandatory source status UNICOR currently has under its founding legislation. UNICOR Corporate Management opposes this bill because it would jeopardize the basic mission of the Corporation, to employ Federal inmates so as to avoid dangerous idleness in a Federal prison population that is currently as overcrowded as it has been in modern history.

While UNICOR has a mandatory-source status under the law, Corporate practice is not to invoke that status and to rely instead on a preferred-source status in its communications with possible customers. UNICOR must be as competitive in its pricing, quality, and delivery terms as its private sector competitors. When UNICOR achieves such a competitive level, its competitors sometimes resort to charges of undue competition. In a competitive market place, such charges are to be expected. UNICOR management will remain sensitive, however, to its legal obligation to avoid becoming an undue burden of competition.

QUESTIONS SUBMITTED BY SENATOR WEICKER

Requested Salary Increase for Correctional Officers

Question: I understand you requested OMB to increase the salaries of correctional officers at the Federal Correctional Institution in Danbury, Connecticut. What is the status of this request?

Answer: The Department of Justice forwarded to the Office of Personnel Management (OPM) on April 1, 1988, a request to increase correctional officer salary levels at the Federal Correctional Institution, Danbury, Connecticut and five other correctional institutions. The OPM is currently reviewing the request and has formally advised us that the requested rates are too high and may have to be reduced. We are awaiting final action.

Wage Grade Differential

Question: Why do the wage-grade workers at the FCI in Otisville, New York make, on the average, a dollar an hour more than their counterparts at the FCI in Danbury, Connecticut?

Answer: Wage-grade salaries at FCI Otisville, New York do exceed those salaries at FCI Danbury, Connecticut, on the average by $.09 to $1.25 more per hour. The Office of Personnel Management (OPM) defines wage-area boundaries, prescribes the industries and jobs to be surveyed and designates a lead agency to plan and conduct wage surveys for the area in collaboration with the OPM. (The Veterans Administration is the lead agency in this case.) The Veterans Administration has collected information in its survey which indicates that the Newburgh, New York wage area should earn a higher rate than the New Haven, Connecticut wage area. We believe this pay disparity is unreasonable and have tried, unsuccessfully, on several occasions to get the OPM to adjust the rates.

IMMIGRATION AND NATURALIZATION SERVICE

STATEMENT OF ALAN C. NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

SUPPORT OF PRESIDENT'S BUDGET

Senator HOLLINGS. Mr. Nelson, what about yourself, what can we do to help you?

Mr. NELSON. Mr. Chairman, I am glad to be here with the other members of the Department of Justice.

I might make two points, Mr. Chairman. One is, in our basic INS budget, be sure that you support the President's level of request. There was a little misconception on the House side that our 1989 base was $741 million. The real 1989 base is $806 million.

There shouldn't be any confusion on that. From that base our total budget increases only by 6 percent, which is certainly under the Department's overall average. The important thing is that there not be any misconception on the funding issue.

The Immigration Service, as you know, gets all of its funding through the Immigration Act. We have been treated well by the Congress and the administration in that area. So we will have adequate funding if the 1989 budget is passed as requested.

We have no drug money per se. If additional drug monies are allocated through the DeConcini-D'Amato legislation, or otherwise, clearly the Immigration Service needs to be looked at very carefully for its fair share, because one of the best kept secrets, frankly, is the efforts of INS in drug enforcement.

On the land border with Mexico, we seize 61 percent of the cocaine and 49 percent of the marijuana, over half of all narcotics seized on the land border. We are proud of that, and we are proud to work with the other agencies on Operation Alliance and otherwise.

As the Attorney General indicated, we are part of the team with the other members here and other agencies outside the Department of Justice. I think we are doing a good job, and we want to continue. We have devoted a lot of time and effort, and that needs to be continued. This requires keeping our funding level up. Operation Alliance has worked well.

I might also mention, Senator Chiles testified before the Immigration Subcommittee last week, as did I. He spoke about his series of bills, S. 972 through 976. We support those, as the Attorney General indicated. We think that it is good legislation and would encourage the Congress to move forward on those bills.

[The prepared statement of Mr. Nelson, and submitted questions to the Service follow:]

DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
STATEMENT OF THE COMMISSIONER
ALAN C. NELSON

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss with you what the Immigration and Naturalization Service is accomplishing in the nation's war on drugs and what we expect to achieve in 1989 and beyond. The Service continues to play an ever increasing and important role in this critical effort. It frequently is not known that INS seizes the most drugs of any agency on the land border between ports of entry on the Southwest border.

I have a major concern regarding our 1989 Appropriation. I understand that the 1988 Congressional appropriation of $741,114,000 is being considered as the 1989 budget base for INS. This amount ignores carryover funding that INS has available in 1988. The correct base for 1989 is $806,261,000, not $741,114,000. Without this base level funding, we will be compelled to cut back on staffing to the detriment of, key enforcement programs including our efforts directed against illegal drugs.

Border Operations

For several years the Border Patrol has been increasingly involved in the interdiction of drugs and narcotics, particularly since becoming a major participant in "Operation Alliance". The number of seizures, the quantities, and the dollar value of drugs seized have grown dramatically. This should come as no surprise, since drug smugglers and traffickers have increasingly shifted their activities to the Southwest land border away from the Caribbean and the Southeastern states because of stepped-up interagency enforcement operations in those areas.

Patrol agents made 2,751 narcotics seizures during 1987, a 112 percent increase over 1986, with an estimated value in excess of $582.4 million. For these seizures, marijuana (approximately 209 thousand pounds) and cocaine

(12,813 pounds) were the two most frequently intercepted drugs. This is a solid indication of the increase in the volume of narcotics traffic which is coming across our land borders. In the first quarter of 1988, the Patrol made 710 seizures valued at $272.6 million which more than doubles the seizures of the first quarter of 1987. If the trend continues, 1988 will be another record year for drug seizures. (See attached charts.)

The Border Patrol has the primary responsibility for the interdiction of narcotics between the ports of entry. INS has interdicted 61 percent of all the marijuana and 49 percent of the cocaine seized along the Southern land border of the United States, excluding the ports of entry seizures. Patrol operations continue to produce a very substantial return on investment in anti-drug activities.

The Wharton Econometrics research group, in a study prepared for the U.S. Customs Service, reported that every dollar spent in 1986 on intercepting drug shipments before they entered the country resulted in the seizure of $7.05 of cocaine and marijuana. Using the same methodology as the Wharton study, the return on investment for the Border Patrol in 1987 was much higher. During the year, the expenditure of $16.9 million in Border Patrol drug interdiction efforts (including the prorata cost of personnel, supplies, and task force support) resulted in the seizure of drugs and narcotics valued at $582,295,375 -- a yield of $34.46 in seized drugs for every dollar invested. There is no question that a strong, effective Border Patrol presence is an important part of a comprehensive strategy aimed at cutting the flow of drugs into our country.

While INS is continuing the planned expansion of the Border Patrol and is increasing the number of agents on duty, an important, promising new effort is yielding excellent results. On April 9, 1987, the Patrol began using Belgian Shepherd dogs to detect drugs at traffic checkpoints in Kingsville, Falfurrias, and Rio Grande City, Texas. These animals are trained to detect cocaine, marijuana, and heroin, as well as any human cargo attempting to be smuggled into this country.

The Canine program initiated by the McAllen, Texas Border Patrol Sector, has proven to be an unqualified success. The dogs have detected illegal aliens and narcotics concealed in various types of vehicles and containers. Collectively, the dogs have been directly responsible for the following seizures in the INS Southern Region:

Marijuana - 21,628 pounds, valued at $17,302,712
Cocaine - 4,392 pounds, valued at $140,560,000
Other drugs - valued at $10,517

These seizures are through February, 1988. These dogs, in fact, have been so effective that the McAllen Border Patrol office has received threats of harm against the dogs by drug smugglers, which is further testimony of the value and effect of the Canine program. (See attached news articles.)

The program has since expanded to twenty Canine's now working all along the U.S./Mexico border. The INS Western Region began their program in early March, with plans to purchase more animals. We are definitely making it more difficult for smugglers attempting to bring illegal drugs through our traffic checkpoints.

The Border Patrol has also embarked upon drug awareness programs in the public schools. The drug awareness programs in conjunction with the Canine teams, have been highly successful in the McAllen and Laredo, Texas Sectors. "Rocky" and "Duko", both Belgian Shepherds, have been very instrumental in the drug awareness programs in the schools, as well as being very effective members of the Border Patrol drug interdiction program.

Interior Enforcement - Criminal Aliens

While the Border Patrol is playing a key role in interdiction operations, INS is increasingly involved in other drug-related operations. The Investigations program is undergoing expansion to support higher levels of activity in efforts dealing with criminal aliens. Major pilot programs are under way in Los Angeles, New York City, Chicago, and Miami to establish or enhance the exchange of automated information between INS and local law enforcement agencies regarding narcotics offenders. I expect these efforts to yield significant results as a part of the Alien Criminal Apprehension Program.

Our efforts to expedite deportation of criminal aliens (particularly narcotics violators) are also being expanded under the Institutional Hearing Program which involves coordinated efforts among INS, the Executive Office for Immigration Review, and Federal, state and local prison systems. The goal of this program is to ensure that expulsion and deportation proceedings are completed in the institutions, thereby reducing INS detention costs and expediting the removal of the aliens upon completion of their sentences. The Institutional Hearing Program promises to be an excellent, cost-effective program.

The Service has assumed a greater role in the Organized Crime Drug Enforcement Task Force (OCDETF) operations by assigning over 100 special agents in the Investigations Program to this important effort. Our personnel are an integral component in these interagency working groups, working on major cases in which criminal aliens are key players. Several examples help to illustrate how much our agents are contributing to the overall effort against drugs.

In one case, an OCDETF investigation of a Jamaican cocaine and marijuana trafficking enterprise culminated in the dismantling of a fraudulent document vending ring which issued identity documents to members of an extensive Jamaican narcotics organization. Two key defendants were convicted on 27 felony counts.

In another OCDETF case, INS Special Agents completed an extensive investigation which led to the arrests of 15 Jamaican criminal aliens all of whom were participants in a narcotics trafficking organization responsible for the distribution of two kilograms of cocaine per week in the Baltimore metropolitan area. The defendants were convicted of a variety of felony narcotics, alien smuggling, and document fraud charges and were given substantial sentences without parole.

In the first nine months of involvement in the OCDETF program, (May 1987 to January 1988) over 400 criminal aliens involved in drug activity were apprehended.

Inspections

While the Service expects to make considerable progress in expediting the deportation of criminal aliens, measures have also been taken to assure that deported criminals are kept out of the U.S. Resources available from the Immigration User Fee have allowed us to add 300 Inspectors at major airports to expedite the flow of travelers into the country while simultaneously improving the screening of applicants for entry into the United States. In addition, the enhancement of the National Automated Immigration Lookout System (NAILS) with funds provided by the User Fee Program will expand access to information on deported aliens. In the near future, information contained in the State Department's Automated Visa Lookout System and Treasury's Enforcement Communications System will be available to INS in a pilot system which will be used to test and evaluate a prototype for the integration of these major databases with the NAILS database. This promises to be a major step in providing the best information possible for our inspectors to prevent criminals from entering the country.

Conclusion

The activities which have been summarized are all funded from resources made available to INS in our appropriation and through the Immigration User Fee. In view of the interrelationship between aliens and the narcotics traffic, the involvement of INS in the nation's war against drugs is a logical and important outgrowth of the Service's enforcement of the Immigration and Nationality Act.

The long-term commitment of INS personnel and supporting resources is essential in the overall effort to cut the drug supply and to neutralize the drug traffickers. The additions to the Border Patrol, Investigations, and Inspections operations are already producing results. With your continuing support, we can and will succeed in this vital national effort.

WAR ON DRUGS

Enforcement Program

McAllen Border Patrol Sector → **K-9 Dog Team** →

Rocky - Kingsville, TX

Barco - Falfurrias, TX

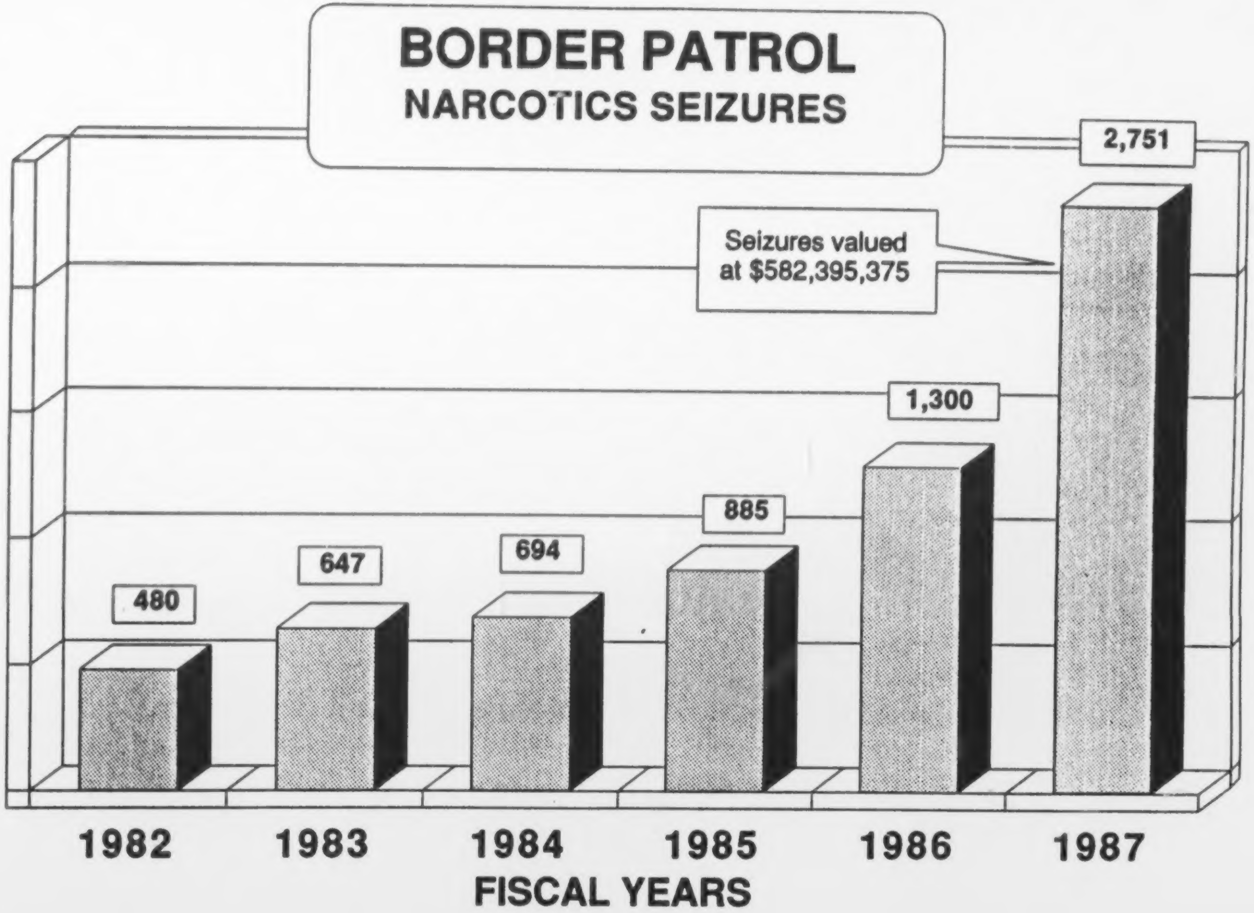
Rc
BORDER PATROL

Border Patrol K-9 Unit

10 Month Accomplishments
Number of Seizures

168

Marijuana	**20,976 lbs.**
Dimetane	**635 bottles**
Cocaine	**47,761 oz.**
Heroin	**656 oz.**
TOTAL VALUE	**$129,361,970**


BORDER PATROL
NARCOTICS SEIZURES
Seizures valued at $582,395,375
480
647
694
885
1,300
2,751
1982
1983
1984
1985
1986
1987
FISCAL YEARS

Los Angeles Times — 2/17/88

K-9 Reinforcements to Help Put the Bite on Drug, Alien Smugglers

By HUGO MARTIN, *Times Staff Writer*

The U.S. Border Patrol hopes to give smugglers of narcotics and illegal aliens a tougher time crossing the Mexican border into the United States now that Wodon, Barry, Kelly, Rocky, Bart and Brando are on the job.

The six dogs—Dutch and Belgian Malinois that have been trained to sniff out drugs and people hidden in vehicles—are part of a canine program launched Tuesday by the Border Patrol in the U.S. Immigration and Naturalization Service's Western Region.

It will be the first time that trained dogs have been used to check vehicles at or near the U.S.-Mexico border in the Western United States, said Dale Cozart, chief patrol agent of the Border Patrol's San Diego Sector.

The dogs' time has come "because we are seeing skyrocketing drug seizures, and illegal aliens become more and more subjected to life-threatening situations by smugglers," said Harold Ezell, INS western regional commissioner.

The dogs are unique, according to their trainer, David Reaver, because they are trained to detect narcotics hidden in secret compartments of vehicles, as well as hidden people. Reaver, owner of Adlerhorst International Inc. of Riverside, which supplies dogs for more than 85 law enforcement agencies in the Southwestern United States, said that unlike most drug-sniffing dogs, these dogs are trained not to bark or scratch when they detect illegal drugs or people in the car. Reaver said that the dogs are 95% reliable in finding drugs and hidden passengers.

The animals, valued at about $6,000 each, are expected to save the Border Patrol between 800 to 1,000 man-hours a year, Reaver said. Since the dogs simply signal their trainers by sitting or stopping when they detect illegal drugs or hidden passengers, Reaver said, they are expected to cause much less damage to vehicles being inspected than regular drug-sniffing dogs.

In front of 25 reporters and photographers at the San Clemente Border checkpoint, Reaver and members of the Border Patrol demonstrated the abilities of the dogs by hiding a man in a concealed compartment in the rear of a station wagon. When Brando, a black male Dutch Malinois, reached the door nearest the compartment, he stopped, signaling to his trainer that he had detected the scent of something.

Dogs Perform

Border Patrol agents also demonstrated the dogs' ability to sniff out drugs; they hid a bag of marijuana in the grill of the same car. Wodon, a brown male Dutch Malinois, circled the car and then signaled his trainer by sitting in front of the car that he had detected the narcotics. Both dogs were rewarded with a small toy.

Reaver said the dogs have been trained to associate playtime with the smells of drugs such as cocaine, marijuana and heroin. "You can put moth balls or ammonia or anything on this grill, and the dogs will just ignore it because they have no association with it."

Border Patrol agents, who have volunteered to work with the dogs, will keep the animals at their homes. The dogs, which respond to commands given in Dutch, will work eight-hour shifts with their trainers and will be rotated to various checkpoints throughout the area, Cozart said.

The dogs will be used at Border Patrol checkpoints from California to Arizona, Cozart said.

Two of the animals will be assigned to the Yuma Border Patrol Sector, where they will be used at checkpoints along the Mexican border between the Arizona-California line and Tucson. A third dog will be assigned to checkpoints between Tucson and the New Mexico state line, and a fourth will be used in the Border Patrol's El Centro Sector, between the Arizona state line and El Centro. The remaining two dogs will be used to check vehicles at the Border Patrol checkpoints on the San Diego Freeway south of San Clemente and on Interstate 15 near Temecula in Riverside County, Cozart said.

INS spokesman Joe Flanders said the service decided to launch the canine program in the western region following a successful five-month trial project in Texas, where several dogs were used to check vehicles crossing the international border.

The program comes in response to rapidly escalating drug seizures in the Southwest, Cozart said. The value of illicit drugs seized in a three-month period from October, 1987, through January, has increased 168% over the same period the previous year, INS officials said. The dollar amount rose from $46 million to $123 million for that period, they said.

INS and Border Patrol officials could not estimate the impact the dogs will have on narcotics smuggling across the U.S.-Mexican border, but Ezell said he expects the canine program to "reduce it substantially."

Border Patrol agents will continue their practice of stopping suspicious vehicles traveling on freeways near the checkpoints and directing the drivers to an area off to the side. There the dogs and their trainers will inspect the vehicles, Ezell said.

By finding illegal aliens who are being smuggled under dangerous conditions, Ezell said, the dogs also will be saving people's lives.

San Antonio EXPRESS-NEWS — 3/10/88

Drug-sniffing dogs put on $30,000 hit list

By JACQUE CROUSE
Express-News Staff Writer

Sniffer dogs who have dented drug traffickers' business to the tune of more than $100 million in less than a year have a $30,000 bounty on their heads.

Barco and Rocky — two Belgian malinois trained in San Antonio and sold to the U.S. Border Patrol for use in sniffing out drugs and illegal aliens in South Texas — evidently have angered traffickers with their success since April, officials said.

"There have been telephonic threats to the McAllen office, beginning about two or 2½ months ago," said Terry McIntosh, deputy regional chief of the U.S. Border Patrol in Dallas.

McIntosh, who helped implement the sniffer dogs program almost a year ago, said the threats were aimed mostly at Rocky, who has become a sort of mascot in the fight against drugs and is used in many drug awareness programs for children.

"But the threat was said to go for all the dogs used by Border Patrol," he said. "The callers said they have put out the word they will pay to have the dogs killed."

Jack Vickery, supervisory Border Patrol agent in McAllen, confirmed there were threatening telephone calls.

Two dogs trained at the same time, Duco and Benno, are on duty in the Laredo area of the border and have been since last April.

The dogs in Laredo have received no threats, according to Border Patrolman Gregory White.

Since lat April, 10 more dogs have been purchased and trained.

They are on duty in McAllen and Laredo as well as in Marfa, El Paso and Del Rio.

"We hope to have them working soon in New Orleans and Miami, too," McIntosh said.

Vickery said the dogs cost about $9,000 each to purchase and train for the Border Patrol.

McIntosh said the dogs have been under 24-hour security since the threats.

"We don't want to leave them vulnerable," he said.

The dogs in the McAllen sector aided in finding $98,351,000 in drugs from Oct. 1 to Feb. 29, Vickery said.

From mid-April through September, they were responsible for another $31,401,000 in drug seizures.

That brings the grand total for Rocky and Barco to $129,752,000 in drug seizures involving mostly cocaine and marijuana, but also some heroin and prescription dimetane.

In the Laredo area, Duco and Benno have ferreted out $5,748,433.50 from October through mid-February.

From the end of June when the pair was finally placed at Laredo, through September, they sniffed out $1,403,328 in drugs.

They are different from other sniffer dogs in that when they find the odor of drugs or people (in cases of illegal aliens) they simply sit down, look at their trainer and wag their tails.

Others, such as those used by U.S. Customs at ports of entry into the United States, are trained to become agressive when they spot drugs or contraband.

McIntosh said the program has been extremely effective and more dogs will be trained for and purchased by the Border Patrol.

"One, the dog at Marfa, also is trained in search and rescue, and is used when people are lost, or in cases where aliens may be left somewhere abandoned in a railroad car or truck," he said.

"He not only sniffs out aliens and drugs, but is used to help the community in more ways," he added. "They really have been worth the investment."

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Immigration and Naturalization Service

1989 Budget Request

Question: The 1989 budget requests $859.3 million for the Immigration and Naturalization Service. How much of this $118 million or 16-percent increase over 1988 is devoted to drug enforcement?

Answer: In 1988, an estimated $70 million was spent by INS on drug law enforcement. In 1989, it is estimated that $94.2 million will be spent by INS on drug law enforcement, an increase of $24.2 million or 35 percent. These numbers are estimates based on the percent of time a border patrol agent or criminal investigator spends on drug-related matters and are the official Drug Policy Board numbers.

Border Patrol

Question: I note from previous years' testimonies that for several years the Border Patrol has been seizing progressively larger quantities of drugs. In fact, between 1986 and 1987 the increase in drug seizures was 112 percent. Do you feel the increase in drug interdiction is a direct result of the increase in Border Patrol personnel?

Answer: The increase in drug interdiction is due to a combination of factors. Cross-designation authority and drug training have enhanced the Border Patrol agent's ability to intercept narcotics being smuggled across the border. The Operation Alliance mobile corridor operations have concentrated Border Patrol resources into known drug trafficking areas and have produced a significant increase in the seizure of illegal drugs along the border. The Patrol has also instituted a K-9 program to aid in the detection of aliens and narcotics being smuggled into the United States. The dogs, utilized at traffic-checkpoint inspections, have been very successful in the detection of drugs. They have also played a role in drug education and awareness programs. The Patrol participates in school drug education programs, using the dogs to capture the interest of children in saying "No to drugs".

Our seizures have been going up dramatically. We expect this to continue to be the case.

Drug Seizures, 1985 - 1987
Summary Information

	1985	1986	1987
Total No. of Seizures	885	1,300	2,751
Marijuana (lbs.)	64,247	133,832	209,281
Cocaine (lbs.)	1,257	2,496	12,813
Estimated Value (all drugs seized)	$119.8 mil.	$186 mil.	$582.4 mil.

Question: I understand the Customs Service funded a study by Wharton Research Group which concluded that for every dollar spent in 1986 on the intercepting of drugs along the border resulted in the seizure of $7.05 worth of cocaine and marijuana. How does the cost effectiveness of INS operations in drug seizures compare with that of Customs?

Answer: The Service has had a very high rate of return in its drug interdiction efforts. The Wharton Econometrics Research Group, in a study prepared for the U.S. Customs Service, reported that every one dollar spent in 1986 on intercepting drug shipments before they entered the country resulted in the seizure of $7.05 worth of cocaine and marijuana. Using the same methodology as the Wharton study, the return on investment for the Border Patrol in 1987 was much higher. During that year, the expenditure of $16.9 million in drug interdiction efforts resulted in the seizure of drugs and narcotics valued at $582,295,375 -- a yield worth $34.46 in seized drugs for every dollar invested. As noted in an earlier answer, the Border Patrol expenditure of $16.9 million is based on the estimated percentage of time Border patrol agents spend on drug-related matters.

Question: The Border Patrol results in the Southwest are far above those of other Federal law enforcement agencies. I understand 61 percent of all marijuana seizures and 49 percent of all cocaine seizures made in the Southwest were accomplished by the Border Patrol. Are these impressive results due to increased Border Patrol staffing or other factors?

Answer: The increase in drug interdiction is due to a combination of factors. The increase in Border Patrol staffing is an important element. Cross-designation authority and drug training have enhanced the Border Patrol agent's ability to intercept narcotics being smuggled across the border. The Operation Alliance mobile corridor operations have concentrated Border Patrol resources into known drug trafficking areas and have produced a significant increase in the seizure of illegal drugs along the border. The Patrol has instituted a K-9 program to aid in the detection of aliens and narcotics being smuggled into the United States. The dogs are being utilized at traffic-checkpoint inspections and have been very successful in the detection of drugs. Their use is being expanded. We expect that through a combination of activities the results which we are achieving can be surpassed in the future.

K-9 Corps

Question: It has been brought to my attention that INS has been quite successful in the use of a K-9 Corps to detect drugs at the border. Can you comment on the results and what your plans are for using the K-9 program in activities other than purely detection applications?

Answer: Due to the volume of illegal aliens that the Border Patrol encounters, it is hoped that the K-9s will be able to save human lives as well. Perhaps tragedies such as the box-car incident which occurred in Sierra Blanca, Texas, last year can be avoided. (An alien smuggler locked twenty aliens inside a railroad box-car and all twenty aliens suffocated.) The K-9s will also be utilized in search and rescue missions in such areas as the "Big Bend Park", in the Marfa, Texas Sector, and in the desert regions of the Yuma and Tucson, Arizona Sectors, where the Border Patrol has initiated Desert Area Rescue Teams. These teams respond to reports of missing persons and/or illegal aliens who experience difficulty with the extreme temperatures while traversing the desert during the summer months.

Training of the Belgian Shepherd dogs takes 13 weeks at training sites in San Antonio, Texas and Riverside, California. Each dog costs approximately $5,000 coupled with an annual "maintenance" cost of $325 for veterinarian services and $456 for food.

The Border Patrol has also embarked upon a Drug Demand Reduction Education Program in the public schools. The Drug Awareness Programs, in conjunction with the K-9 teams, have been highly successful in the McAllen and Laredo, Texas Sectors. "Rocky" and "Duko", both Belgian Shepherds, have been very instrumental in the Drug Awareness Programs in the schools, as well as being very effective members of the Border Patrol drug interdiction program.

QUESTIONS SUBMITTED BY SENATOR BUMPERS

Immigration and Naturalization Service

Legalization

Question: This may be one of your last appearances before Congress prior to the termination of the general legalization program on May 5, 1988. Do you still believe that the time period under which aliens can apply for amnesty should not be extended? Can you summarize for us, please, the results of the legalization program in terms of how many have applied, how many qualify, and so forth?

Answer: Prior to the record rate of applications achieved during the week of April 29, the number of legalization applications peaked the last week of August 1987, when over 53,000 applications were received, just prior to the effective date of employer sanctions.

The number of applicants dropped off through September and October and continued to drop until January 1988. Since that time, there was a steady increase in applications each week, which is attributed to the approach of the final deadline for coverage under the amnesty provisions. There were strong indications that an extension of the program would have only served to change the deadline for those who would have applied by May 4, 1988. An extension would have created additional expenses and would have provided no offsetting benefit for those persons eligible for amnesty.

As of May 4, 1988, approximately 1,600,000 aliens applied for legalization (not including Special Agricultural Workers applications). Due to the application surge which occurred in the closing days, the application count has not been made final. For completely processed applications, 818,039 have been approved and 9,162 denied as of May 1, 1988.

The total revenue for Phase I, the Temporary Resident Program, will be approximately $256,000,000. At the present budget levels, total program costs for Phase I will be approximately $200,000,000. Any carryover from Phase I will be used to offset the fee amount charged to aliens during Phase II, the Permanent Resident Program.

For a number of valid reasons noted below, current levels of funding would have been required for an extension. The nationwide program would have required anywhere from $7 to $8 million per month or about $55 million (including FBI, Social Security, and Qualified Designated Entities (QDE) payments) to accept applications through November 30, 1988 (January 31, 1989 to receive applications from QDE), if the INS had to maintain the current staffing levels and keep offices open throughout the extension. At this level of spending, the Service would have required approximately

331,000 additional application receipts over this period to break even.

The Service did not believe that 331,000 aliens would apply if the extension was approved. The public information campaign and community group awareness programs have been extensive and successful. Surveys conclude that the eligible alien population was reached and were aware of the temporary residency program and the legalization program deadline.

If any extension would have been approved, the following costs would have been affected:

- Many offices that were scheduled to close in July and December would have had to remain open in order to provide effective services to the public. This would have forced the Service to renew office space and equipment leases.

- There would have been increased communications and data processing costs.

- Personnel not presently provided for in the current fiscal year budget would have had to be retained.

- An overlap of staffing needs would have occurred in 1989 as the Phase I extension terminated and Phase II began.

- The increased Phase II costs would have increased incrementally the Phase II fee, punishing those aliens that filed on time by forcing them to bear increased costs of Phase II.

Question: **Do you believe the INS' policy on family unity has been sufficient to address the need in this area? As you know, we had to consider this issue in last year's Continuing Resolution in this Subcommittee. Do you still believe there is no need for legislation mandating that immediate family members be legalized?**

Answer: Yes, the INS' policy on family fairness has been sufficient. On October 21, 1987, the Service issued an analysis of the family fairness issue, entitled "Legalization and Family Fairness--An Analysis." The analysis described the reasoning behind the family fairness policy that was announced for the non-qualifying family members of the legalization applicants and its parallel with other INS programs and policies.

Based upon the findings in the analysis, there is no necessity for legislation mandating that immediate family members be legalized. As an added point of information, thus far, no family members of newly legalized aliens have been deported.

Replenishment Agricultural Workers

Question: I have heard from several farmers in my State who would like to use replenishment agricultural workers to work on farms that produce seasonal crops. It is my understanding that the replenishment agricultural program is being implemented in the border States, such as Texas and California, and in Florida. Can you give me an assurance that the INS will make a strong effort to ensure that this program works in other States, as well? What efforts have been taken to let farmers in non-border States such as Arkansas know about this program?

Answer: The Replenishment Agricultural Worker (RAW) program, Section 210A of the Immigration Reform and Control Act (IRCA) of 1986, should not be confused with the Special Agricultural Workers (SAW) Program, Section 210 of IRCA.

The SAW program accords temporary residence to aliens with 90 man-days of field work in perishable crops from May 1, 1985 to May 1, 1986. However, the statute does not place any restriction limiting geographical location or future occupation of the workers. A SAW temporary or permanent resident may seek employment outside of agriculture. The SAW program commenced June 1, 1987, and terminates on November 30, 1988.

The RAW program provides for the admission of a specified number of foreign workers to meet predicted labor shortages, if any, during 1990 to 1993. In order for the RAWs to acquire permanent resident status, they must perform 90 man-days of seasonal agricultural services in each of the three years following the date the RAW status commences. No geographical restrictions are mandated by the RAW statute. The program is designed to benefit farmers needing additional agricultural services in all States, those within the interior as well as those along the border. Implementation strategies have been developed. The Service is presently developing a working draft of the RAW regulations for publication in the Federal Register.

As of early May, 500 applications for SAW status have been filed by residents of Arkansas.

Naturalization Figures

Question: In the recently published Immigration and Naturalization Service Annual Report, the agency reports that 310,000 people became U.S. citizens in 1986. However, in the 1986 Statistical Yearbook of the INS, it is consistently reported that 280,623 persons were naturalized. How can you explain this discrepancy?

Answer: The figure of 310,000 naturalizations reported in the 1986 INS Annual Report is the number compiled from the INS' workload measurement system. The workload data represent an estimate of naturalizations approved during a fiscal year and are released as preliminary numbers used principally for budget and planning purposes. The number of 280,623 reported in the 1986 Statistical Yearbook represents the number of actual naturalizations for whom detailed characteristics were available at the time the Yearbook is published. The footnote in table 43 of the Yearbook provides information on the differences between the workload statistics and the number of naturalizations reported in the Yearbook. In subsequent reports we will more clearly define the differences between these two figures.

1986 Statistical Yearbook

Question: The 1986 Statistical Yearbook of the INS contains some internal contradictions. For example, the discussion of naturalizations in Section Five of the introduction ranks the top two countries of origin as Vietnam (1) and the Philippines (2). Yet, all of the tables in the Statistical Yearbook reverse the order and show numbers of naturalizations which contradict the introductory materials. This is not an isolated example. Could you please outline for us what the INS is doing to improve and expedite its Management Information Systems and other statistical analysis products?

Answer: The concern raised is an understandable one in view of the nature of the data reported. The information presented in Section V of the text concerning the number of naturalizations of persons born in Vietnam and the Philippines is correct as reported and is consistent with the text tables. The text refers to country of birth as does Table 51. Table 52 refers to country of former nationality, which may be the source of the misunderstanding in this instance.

The INS' statistical capabilities have been strengthened substantially during the past few years as automated data processing has replaced manual systems throughout the Service and statistical analysis has been accorded a higher priority. These changes have produced more timely and accessible statistics and have enabled the Service to respond quickly to increased needs for statistical data. For example, the INS Legalization office and the Statistical Analysis Branch have compiled detailed current information about applicants for legalization and have provided the information in summary form to INS offices, Congressional committees, other Federal and State agencies, and the public. The 1986 Statistical Yearbook was improved significantly compared to recent years with the addition of an explanatory text and graphs, and a reorganization and simplification of the detailed tables. In order to increase accessibility to INS data and products the 1965 through 1986 Statistical Yearbooks are now available for sale at the National Technical Information Service. Researchers may also purchase data tapes with detailed information on immigrants admitted beginning in 1972. Further, a methodology was developed to use data from the INS' Nonimmigrant Information System to estimate annual rates of illegal overstay for each country in order to evaluate the effectiveness of the Immigration Reform and Control Act of 1986. These and other improvements in INS statistical capabilities are consistent with the 1985 recommendations of the National Academy of Sciences, in a study funded by the INS, for improving U.S. immigration statistics.

Naturalization Application Backlogs

Question: I understand that there are considerable backlogs in the application process for naturalization. Why do such backlogs exist? What do you expect the backlogs to be at the end of this year? Does it have anything to do with the reports that naturalization officers have been leaving jobs to work on legalization programs?

Answer: There are two potential areas of backlog accumulation in the naturalization function -- INS and the courts. As a rule, when INS productivity is high at a given location, a backlog of eligible applicants awaiting the final naturalization hearing develops due to the courts' inability to accelerate their schedules. In the process of implementing the legalization program, most offices lost experienced officers and clerks from the naturalization activity. Most significant to ongoing operations was the loss of clerical employees. The most experienced and brightest of these individuals qualified for legalization adjudicator positions at higher grades, often at offices closer to their residences. There was an incentive to transfer to legalization. There is a substantial learning curve for both officers and clerical positions in the naturalization functions; accordingly, the replacement process has been a long one, and is only now being fully realized at many of our larger offices. As a result, the national naturalization pending count climbed from 126,500 in October 1986 to over 162,000 in October 1987. With only a few exceptions, courts have achieved currency as a result of the drop in INS production. With the personnel replacement process now nearing completion, the pending figure has begun to fall, and at the end of January 1988 (our most recent available data) stood at 158,600. We fully expect this trend to continue at an accelerated pace as emphasis on the legalization process declines, and as naturalization personnel become more experienced.

Outreach Program

Question: The INS Outreach Office is responsible for providing up-to-date information on its programs to community service-based organizations. Have there been any recent cutbacks in the staffing for this office? If so, why?

Answer: The INS Outreach Program will continue on a timely basis to distribute technical information on legalization and other immigration matters to community-based organizations assisting aliens eligible for immigration benefits. The Service does not contemplate any reduction in Outreach personnel or resources which provide these vital information services.

Adjustments to Permanent Resident Alien Status

Question: With the legalization process about to enter its second stage, which is when a person adjusts to permanent resident alien status, why have the regulations that govern this step not been issued? When can we expect them?

Answer: The draft regulations have been prepared and are incorporated in a "preliminary working draft" document that has been released to selected parties and will be made available to the general public during the month of June. The Service will accept and review public comments on the preliminary working draft before the proposed regulations are published in the Federal Register.

QUESTIONS SUBMITTED BY SENATOR RUDMAN

Immigration and Naturalization Service

Immigration and Naturalization Service Drug Seizures

Question: Mr. Nelson, it is my understanding that the Border Patrol is responsible for 61 percent of the marijuana and 49 percent of the cocaine seized along the Southwest land border. What is the total amount in both dollars and positions being dedicated by the Immigration and Naturalization Service (INS) to the drug enforcement effort on the Southwest border?

Answer: The Border Patrol, which has the primary responsibility for drug interdiction between the ports of entry along the Southern land border, dedicated nearly $17 million directly to drug enforcement activities in 1987. This amount includes nearly $2 million which was expended by the Patrol solely to participate in Operation Alliance mobile interdiction task force operations in 1987. The Border Patrol is the primary INS participant in the interagency mobile land interdiction operations. The Patrol's success in Operation Alliance in 1987 resulted in the seizure of 205,186 pounds of marijuana and 8,996 pounds of cocaine with a combined value of over $450 million.

The positions dedicated to drug enforcement include nearly 3,000 Border Patrol agents who have been cross-designated with Titles 19 and 21 search and seizure authority. This authority has significantly enhanced the Patrol's ability to intercept and arrest drug smugglers crossing the Southern border. The Patrol has also augmented staffing levels by providing over $800,000 in six-day overtime in 1987 to increase drug interdiction efforts. In addition, leadership and command structure have been provided to the drug enforcement program by INS with the establishment of six permanent Border Patrol positions in the Operation Alliance command center; two positions in the National Narcotic Border Interdiction System (NNBIS), SW Regional Office, one detailed agent to NNBIS, Pacific Region and another detailed agent to the office of the Executive Director, National Drug Policy Board.

Question: Given the success of the INS in seizing drugs along the border, why were additional drug-related resources not requested for 1989?

Answer: The Immigration Reform and Control Act of 1986 authorized a 50-percent increase in Border Patrol staffing for the purpose of securing the border against any illegal entry into the United States. The 1989 budget contains the resources needed to increase staffing for the Border Patrol. The additional agents, nearly 1,100 by the end of 1989, will continue to enhance all aspects of border enforcement including the seizure of illegal drugs, the arrest of drug and alien smugglers, the apprehension of criminal aliens and potential terrorists, and the enforcement of employer sanctions laws. The 1989 budget will continue to support fully INS's participation in Operation Alliance interdiction activities by the Patrol, as well as expand the Border Patrol's drug awareness and demand reduction programs in the local border communities.

Question: Will your 1989 request adequately support drug enforcement efforts of the INS?

Answer: The 1989 budget request will continue to provide INS the ability to support the Administration's war on drugs within this country. INS has been, and will continue to be most productive in its drug enforcement efforts by directing and utilizing its resources in areas which will maximize their effectiveness in reducing the amount of illicit drugs coming into the United States. In addition, the Border Patrol will continue to be fully supported by the 1989 request in the highly successful Operation Alliance interdiction task forces operating along the Southern land border.

Operation Alliance

Question: Commissioner Nelson, it is my understanding that the Border Patrol has been a significant participant in "Operation Alliance" for some time now. In fact, the first director of Operation Alliance was a Border Patrol chief if I'm not mistaken. What types and quantities of resources are being committed by INS to this major anti-drug effort?

Answer: INS, at the inception of Operation Alliance, agreed to cross-designate nearly 3,000 agents already in place on the Southern border with Titles 19 and 21 authority. The cross-designation and required drug training of these agents has been completed and new agent trainees are now being cross-designated at the Border Patrol Academy before assignment to the border. In addition to the agents detailed to Operation Alliance task forces, in 1987 the Patrol expended over $800,000 for six-day overtime in the local Border Patrol sectors to augment staffing levels in order to increase drug interdiction efforts. The amount of overtime expense is estimated to double to about $1.6 million in 1988.

Including the resources committed to the Border Patrol's participation in Operation Alliance, the Patrol has committed nearly $17 million to increase its border enforcement and staff agents at traffic check operations on a permanent basis in areas of high drug smuggling activity. Traffic-check operation is a very successful interdiction activity for disrupting and seizing narcotics shipments crossing the Southern land border. The recent use of trained K-9s for "sniffing out" both drugs and aliens concealed and smuggled in various types of vehicles has further enhanced traffic check operations in the interception of illegal drugs. The K-9 program currently consists of 20 dogs trained in the detection of four basic odors: heroin, cocaine, marijuana and humans. The dogs are collectively responsible for the seizure of over 21,600 pounds of marijuana and nearly 5,000 pounds of cocaine with a combined value in excess of $157 million. Further expansion of the K-9 program by the Border Patrol is anticipated in the near future.

Organized Crime Drug Enforcement Task Force Program

Question: On December 23, 1986, INS was added as a participating law enforcement agency in the Organized Crime Drug Enforcement Task Force Program.

Has there been an increase in the arrests of criminal aliens engaged in drug trafficking since INS began participating in the task forces?

Answer: INS is in the forefront of Federal anti-drug efforts, both at the border and in the interior. Special agents of our Investigations Division continue to be a major, positive influence in such areas as arrest, prosecution, and removal of alien traffickers through participation in the Organized Crime Drug Enforcement Task Force (OCDETF) Program and the Alien Criminal Apprehension Program (ACAP).

Although, presently there is no comparative data that would precisely document an increase in arrests of criminal aliens specifically engaged in drug trafficking, exchange of information between both of these programs has resulted in an increase in the completion of criminal alien investigations from 8,548 in 1986 to a total of 18,195 in 1987. Between May of 1987 (the month in which our first OCDETF agents came on duty), and April of 1988, INS agents have:

-- participated in 58 OCDETF investigations formally accepted by the core city coordinating groups;

-- designated the lead, or co-lead, in 11 of those accepted investigations;

-- arrested 484 aliens involved in serious trafficking activities as a result of those cases (this constitutes solely the number of aliens whose apprehensions are directly attributable to INS/OCDETF operations); and

-- been responsible for, or assisted significantly in, drug-related seizures amounting to $7.3 million in currency; 91 vehicles and conveyances; 169 weapons; 991.9 kilograms of cocaine; 1,521 vials of "crack"; 29.5 pounds of heroin; 23,211 pounds of marijuana; 60 pounds of methamphetamines; and 500 units of LSD.

The majority of the investigative activity that resulted in these accomplishments occurred with less than half of the formal INS OCDETF special agent positions filled. It is anticipated that productivity will increase greatly when the 100 allocated positions are filled.

Question: The National Drug Policy Board's Investigations Strategy and Implementation Plan calls for assigning an additional 50 INS special agents to the task forces. When will these additional agents be assigned to the task forces and does INS plan to absorb the cost of this additional effort?

Answer: INS is implementing the Board's Strategy and is following the Implementation Plan to the greatest extent possible within available resources.

We anticipate that by the end of 1988 all presently allocated or planned OCDETF-dedicated agents will be on duty. INS will absorb the cost of this effort.

Consolidation of the U.S. Customs Service and the INS

Question: Legislation has been introduced in the Senate to place the Immigration and Naturalization Service in the Treasury Department under an Office of Border and Enforcement Affairs. Is there a need to consolidate all of our border activities in one Federal agency?

Answer: We do not believe that there is a need to consolidate all of our border activities in one Federal agency. Separation of the Border Patrol from INS for consolidation into a new agency would seriously impair the coordination of the Patrol with primary INS functions including such programs as: Anti-Smuggling, Investigations, Detention and Deportation, and Intelligence.

Existing border enforcement coordination between INS and the U.S. Customs Service is very effective. Consolidation would provide few benefits, but could result in the creation of a number of serious problems which would far outweigh any positive results. Border enforcement consolidation within the Treasury Department would require Treasury statutes to be changed to allow for immigration checkpoints that are not located in the immediate border area. The Border Patrol currently has authority, which has been judicially upheld, to establish immigration checkpoints away from the immediate border for the purpose of conducting immigration inspections. The Treasury Department has no legal authority to establish these critical enforcement checkpoints and has relied on immigration statutes to provide this enforcement function.

Consolidation of the Inspections program into a new Office of Border and Enforcement Affairs would seriously complicate INS operations from a number of standpoints. The Inspections function is carried out at airports, seaports, and land border ports of entry. Separation and land border inspections in a consolidation of border activities would create problems in maintaining consistency in the implementation of laws and policies governing admissions to the country. Training of inspections personnel in two agencies would be complicated, both in entry-level and journeyman level training.

In the past, INS has utilized immigration inspectors at ports of entry to adjudicate certain types of applications for benefits during periods of "down time." Consolidation of INS land border inspections would eliminate a valuable resource for the processing of these applications.

Question: What would be the effect of this transfer on the non-border functions of INS such as adjudications, naturalization, legalization, alien investigations, employer and labor relations, alien detention and deportation?

Answer: Major problems would result from the transfer of border functions from INS to the Customs Service. We believe that there would probably be a gradual de-emphasis of the enforcement of the Immigration and Nationality Act while greater emphasis would be given to the enforcement of drug laws and other criminal statutes. This shift in enforcement priorities would result in greater numbers of aliens entering the country at and between ports of entry.

Removal of illegal aliens from the interior of the country is more difficult and more costly than preventing entry at the border. The Investigations program workload would certainly be impacted. Enforcement of employer sanctions would be more difficult due to greater numbers of illegal aliens who would be available for exploitation by unscrupulous employers.

In addition, greater numbers of criminal aliens may be able to enter the country. This group would present problems not only for the Investigations program, but would also lead to the perpetration of larger numbers of crimes in violation of State and local statutes.

The Anti-Smuggling program is closely coordinated with Border Patrol operations. This coordination would be hampered in the event that the Border Patrol function was moved into a new office in the Treasury Department.

QUESTIONS SUBMITTED BY SENATOR WEICKER

Immigration and Naturalization Service

Question: We understand that there are more than 10,000 people at Khao-I-Dang turned down by the U.S. Government. A year ago, 24 senators--including myself--wrote to the Administration requesting a review for the denied Khmer in Khao-I-Dang Camp. Last month, I again wrote to the Administration urging a review of this population. Will there be a review of their cases?

Answer: The question of a possible review of a limited number of these denied cases is currently under discussion. It is important to note that of the 150,000 Cambodians originally interviewed by the Immigration and Naturalization Service (INS), over 135,000 (approximately 90 percent) were approved for admission to the United States refugee program. Only 4,600 cases, comprising some 12,000 persons, failed the process for determining refugee eligibility as mandated by law and regulations, or were otherwise found excludable from the United States refugee program. We feel this approval rate should be viewed as a positive sign of the care and concern which went into the original INS adjudication of applicants' claims and which were upheld in two subsequent reviews.

Question: It is my understanding that the State Department issued a Human Rights Report last month stating that Cambodians could not return to Cambodia without fear of persecution. A refugee agency in Connecticut reports that to date, five Cambodian cases were rejected for resettlement by the U.S. Government because they do not meet the requirements of refugee status, i.e., a reasonable fear of persecution if they return to their country. Can you explain this inconsistency?

Answer: The Cambodian chapter in the recently released Country Reports on Human Rights and Practices for 1987 does not state that Cambodians could not return to Cambodia without fear of persecution. The Report does detail an extensive review of current human rights abuses in Cambodia under the Heng Samrin regime. It does not state, however, that all Cambodians are so abused, nor even that those returning would be specially treated. It states that Cambodians caught trying to leave Cambodia are routinely imprisoned. The Heng Samrin regime has recently agreed, in principle, to accept the return to Cambodia of certain groups and individuals now outside the country. No formal repatriation arrangements have as yet been agreed upon between the United Nations High Commissioner for Refugees (UNHCR) and the Cambodian government.

In reviewing an individual's case, INS must make a determination on the applicant's real or well-founded fear of persecution both before departure, and/or upon the possibility of return. While life in Cambodia is not easy, not everyone is individually persecuted, even those who might return after being abroad. As of now, the Heng Samrin regime does not accept these people back. The United States denial of their claims to refugee status and resettlement in the United States does not preclude their claims being considered by another country of resettlement.

FEDERAL BUREAU OF INVESTIGATION

STATEMENT OF JUDGE WILLIAM S. SESSIONS, DIRECTOR, FEDERAL BUREAU OF INVESTIGATIONS

SUPPORT OF ADMINISTRATION BUDGET

Senator HOLLINGS. Judge Sessions, where do you find the greatest need at the Bureau now that you have taken over?

Judge SESSIONS. Mr. Chairman, if in fact you are going to approve the budget requested by the FBI at the level that the administration has requested that will be of great help.

I would say that the perception that I have of the DeConcini-D'Amato bill is that if, in fact, you do enact that and go the second step, you will allow us to be restored in the area of our ability to combat long-term, long-range enterprise-type investigations and to deal with them.

If that can possibly be brought to bear, that it will pass, it would be of significant help to us.

Senator HOLLINGS. There are members of the committee, Judge, who are concerned about the time, effort, and expense of the attention given to librarians regarding who is drawing out a particular book and what the person might be thinking.

Judge SESSIONS. Yes, sir.

Senator HOLLINGS. Our former distinguished Director, Mr. Hoover, has now passed on and that era has passed on along with him. With all the drug enforcement, all the law enforcement, hard crime, and everything else, I would think that you would have great misgivings about going in and starting to work with libraries. The FBI has real crime to look at.

I have some questions from the other members. Do you have a comment about this?

LIBRARY AWARENESS PROGRAM

Judge SESSIONS. Yes, I am glad that you raised it, Mr. Chairman.

The Library Awareness Program is a program that was designed to deal with the circumstance in the great city of New York, and to deal with technical and scientific libraries. The Library Awareness Program, of course, was based upon our perception that those libraries and their materials, the scientific data and technical data, were being used and exploited by foreign sources.

There are also, as you know, responsibilities that fall on the FBI for foreign counterintelligence. Of course, where you have operatives of other countries utilizing libraries for those purposes, it is quite natural that we would be aware of that.

The Library Awareness Program is actually restricted to New York City, although there are other related activities in connection with San Francisco and Washington, DC, where there are major resources in place to deal with them.

I think that this is about as much as I can explain here, but I would be glad to discuss it further, and I have dealt with that issue before the Senate Select Committee on Intelligence. It is of great concern.

I do not perceive at all that we are not sensitive to first amendment rights and to the rights of people to freely use libraries, and we are very respectful of that.

EMBASSY SECURITY

Senator HOLLINGS. We appreciate the evidence of that sensitivity.

With respect to the Moscow Embassy, your predecessor, Judge Webster, was a little taken aback when we asked him about indicting, perhaps, a regional security officer at the Department of State relative to the Moscow Embassy.

Back in the 1950's, we had this problem of security in the State Department. There was a section 18 U.S. Code 793(f), I think it is, where you willfully and knowingly allow classified material to fall in unauthorized hands.

Judge SESSIONS. Or in a grossly negligent fashion.

Senator HOLLINGS. Right. It was $10,000 fine and 10 years in jail.

We have statements, and I only say this because the statement has been put in the public record, of marines who said that the regional security officer didn't care and allowed unauthorized personnel to come and go. They had alarms, and they were told to forget about the alarms. They filled in the names, and everything else.

It could be that the Naval Investigative Service hammed up the act, and individual statements could not be used against then and, therefore, bring a charge for a Military Court Martial.

On the other hand, I thought the FBI, looking at this particular case, could well have brought an indictment, It would have taken a lot of statements, and I can get those statements to put before a grand jury now and get an indictment.

Mind you, it would be a healthy thing even if it didn't come to a conviction. It would be far better than the $4 billion we are spending for security, putting in buildings, 2-foot concrete abutments, and everything else around.

Under the Inman Commission, I am wasting a lot of money, if we just had everyone knowing of a fixed responsibility, namely, that regional security officer. He is the man, under the law, in charge, he and the Ambassador, yet everybody blandly says there is no one responsible. It is like the *Challenger* disaster, we couldn't find anybody responsible. We can't find anybody responsible for anything.

What is the status of that particular investigation, or can you say?

Judge SESSIONS. There are parts of it that I can discuss, Senator, and I would be pleased to do that with some detail. I came prepared to do so because I know of your concern. I have read of your concern.

Senator HOLLINGS. Let's you and I get together a little bit later, and not spend the time of the committee, because I know Senator Chiles has some important questions.

Judge SESSIONS. I will be pleased to do that whenever it meets your need.

Senator HOLLINGS. We will get together on it.

[The prepared statement of Judge Sessions, and the submitted questions to the Bureau follow:]

[CLERK'S NOTE: A question submitted by Senator Bumpers resulted in a classified response that has been retained in the subcommittee's files.]

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
STATEMENT OF THE DIRECTOR
WILLIAM S. SESSIONS

GOOD MORNING, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. I'M GLAD TO HAVE THIS OPPORTUNITY TO APPEAR BEFORE THE SUBCOMMITTEE, ALONG WITH THE ATTORNEY GENERAL AND THE OTHER WITNESSES, TO PRESENT OUR 1989 BUDGET REQUEST AND TO DISCUSS THE DRUG ENFORCEMENT PROBLEM AND LAW ENFORCEMENT COOPERATION.

SINCE MY APPOINTMENT AS DIRECTOR, I HAVE BECOME AWARE OF THE ECONOMIC AND FISCAL PRESSURES BEFORE US. HOWEVER, I AM ASKING FOR INCREASES BECAUSE I BELIEVE THAT THE FBI WILL FACE SERIOUS PROBLEMS IF ASKED TO ACCEPT AN INCREASING INVESTIGATIVE WORKLOAD WITHOUT ADDITIONAL RESOURCES. AS YOU KNOW, AS A RESULT OF THE BUDGET SUMMIT AGREEMENT, THE FBI'S 1988 BUDGET REQUEST WAS REDUCED BY $95.9 MILLION. THIS REDUCTION HAS FORCED US TO STRIKE A BALANCE BETWEEN THE AVAILABLE RESOURCES AND THE NEED TO MEET OUR INVESTIGATIVE RESPONSIBILITIES. BECAUSE OF RESOURCE CONSTRAINTS, TODAY THE FBI IS OFTEN UNABLE TO ADDRESS ALL OF THE INVESTIGATIVE RESPONSIBILITIES AT THE LEVEL WHICH I BELIEVE CONGRESS AND THE AMERICAN PEOPLE EXPECT.

I REALIZE THAT FISCAL RESPONSIBILITY REMAINS A VITAL CONCERN TO THE CONGRESS AND THE AMERICAN PEOPLE. THEREFORE, THE FBI IS SUBMITTING A LIMITED BUDGET REQUEST FOR 1989 TO MEET WHAT HAS BEEN A STEADY GROWTH OF OUR WORKLOAD IN ALL AREAS. WE ARE SEEKING A MODERATE INCREASE IN SPECIAL AGENT PERSONNEL FOR SOME OF OUR HIGHEST PRIORITY INVESTIGATIVE PROGRAMS. THE MAJORITY OF OUR REQUEST IS DEDICATED TO IMPROVING THE OPERATIONAL EFFECTIVENESS AND PRODUCTIVITY OF OUR EMPLOYEES. TO ACHIEVE THIS END, WE ARE

PROPOSING A NUMBER OF INITIATIVES IN THE AREAS OF AUTOMATION AND HIGH TECHNOLOGY.

FOR FISCAL YEAR 1989, WE ARE REQUESTING A TOTAL OF $1,503,307,000; 22,988 POSITIONS; AND 22,044 DIRECT WORKYEARS. THIS REPRESENTS A NET INCREASE, OVER THE 1989 BASE, OF $92,047,000; 532 PERMANENT POSITIONS; AND 71 DIRECT WORKYEARS.

MR. CHAIRMAN, I WILL NOW HIGHLIGHT THREE OF OUR INVESTIGATIVE PRIORITIES, DRUG INVESTIGATIONS, WHITE-COLLAR CRIME, AND FOREIGN COUNTERINTELLIGENCE, WHERE WE BELIEVE PROGRAM GROWTH IS JUSTIFIED FOR 1989.

DRUG INVESTIGATIONS

THE FBI HAS ACHIEVED GREAT SUCCESSES IN ITS INVESTIGATIVE RESPONSIBILITIES BY EFFECTIVELY PRIORITIZING ITS INVESTIGATIVE RESOURCES. THIS PRIORITIZATION HAS ENABLED US TO ADDRESS FORMIDABLE NEW RESPONSIBILITIES AND EXPANDED EFFORTS AGAINST OUR TRADITIONAL ADVERSARIES. OUR ABILITY TO MOUNT A STOUT OFFENSIVE AGAINST DRUG TRAFFICKERS, A RELATIVELY NEW FUNCTION FOR THE FBI, EXEMPLIFIES THIS CAPABILITY.

DRUG TRAFFICKING REMAINS ONE OF THE MOST CRITICAL AND DEVASTATING CRIME PROBLEMS FACING THE UNITED STATES TODAY. FROM A VERY LIMITED INVOLVEMENT PRIOR TO 1982, THE FBI EFFORT IN DRUG ENFORCEMENT HAS EVOLVED INTO A SIGNIFICANT COMMITMENT OF RESOURCES FOCUSED AT THE HIGHEST LEVEL OF THE DRUG TRAFFICKING ORGANIZATIONS.

THE DRUG PROBLEM IS OF SUCH MAGNITUDE THAT THE FBI COULD DEVOTE SUBSTANTIALLY MORE, IF NOT ALL, OF ITS INVESTIGATIVE RESOURCES TO DRUG INVESTIGATIONS, BUT THIS WOULD BE AT THE EXPENSE OF OTHER HIGH-PRIORITY FEDERAL INVESTIGATIONS. OF THE 1,107 SPECIAL AGENTS IN THE DRUG

PROGRAM, 673 WERE REPROGRAMMED FROM OTHER FIELD INVESTIGATIVE ACTIVITIES.

IN COORDINATION WITH THE ATTORNEY GENERAL AND THE NATIONAL DRUG POLICY BOARD, THE FBI HAS SOUGHT TO MAXIMIZE ITS EFFECTIVENESS IN THIS CRUCIAL AREA THROUGH THE DEVELOPMENT OF THE NATIONAL DRUG STRATEGY.

IN THE YEAR AND A HALF SINCE THE IMPLEMENTATION OF OUR NATIONAL DRUG STRATEGY, A DRAMATIC OVERALL INCREASE IN THE QUALITY OF FBI DRUG INVESTIGATIONS HAS BECOME APPARENT. THE FBI'S INVESTIGATIVE EFFORTS ARE FOCUSED ON MAJOR DRUG TRAFFICKING GROUPS LARGELY RESPONSIBLE FOR SUPPLYING ILLEGAL DRUG MARKETS IN THE UNITED STATES. SIGNIFICANT RESULTS HAVE BEEN ACHIEVED AND ARE EXPECTED IN THE FUTURE BY CONDUCTING LONG-TERM, SUSTAINED, MULTIJURISDICTIONAL INVESTIGATIONS USING SOPHISTICATED INVESTIGATIVE TECHNIQUES AGAINST THESE DRUG TRAFFICKING ORGANIZATIONS.

ONE OF THE MAJOR OBJECTIVES OF THE FBI'S NATIONAL DRUG STRATEGY IS THE COMMITMENT TO PROVIDE CONTINUING ASSISTANCE TO DEA, AS WELL AS TO OTHER FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT AGENCIES RELATIVE TO INVESTIGATIONS OF DRUG-TRAFFICKING ORGANIZATIONS OPERATING IN LOCAL OR REGIONAL AREAS OF THE COUNTRY. THE FBI AND DEA SHARE RESPONSIBILITY WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES TO RESPOND TO DRUG PROBLEMS THAT ARE UNIQUE TO A LOCAL AREA OR REGION THAT MAY NOT NECESSARILY RELATE TO NATIONAL CONSPIRACIES.

DURING 1987, FBI DRUG PROGRAM INVESTIGATIONS RESULTED IN OVER 3,400 INFORMATIONS AND INDICTMENTS, 2,800 FELONY CONVICTIONS, $72.7 MILLION IN SEIZURES, AND $32 MILLION IN FORFEITED ASSETS. WE ARE PROUD OF THE ACCOMPLISHMENTS WE HAVE ACHIEVED IN THIS AREA BUT AT THE SAME TIME RECOGNIZE THAT THERE IS MUCH MORE THAT NEEDS TO BE

DONE. THE FBI WILL CONTINUE TO PURSUE THE PROFITS OF THE DRUG ORGANIZATIONS BY INCORPORATING SEIZURE AND FORFEITURE ACTIONS WHERE APPLICABLE IN OUR INVESTIGATIONS.

THE FBI, OVER THE PAST TWO YEARS, HAS DIRECTED AN INTERNATIONAL INVESTIGATION FOCUSED ON HEROIN IMPORTATION AND DISTRIBUTION BY ITALIAN DRUG TRAFFICKING GROUPS AND THEIR CRIMINAL ASSOCIATES IN THE UNITED STATES AND ITALY. THE FBI HAS REVEALED THIS SCHEME, WITH SUPPORT OF THE DRUG ENFORCEMENT ADMINISTRATION, THE U.S. CUSTOMS SERVICE, THE INTERNAL REVENUE SERVICE, THE U.S. SECRET SERVICE, ITALIAN LAW ENFORCEMENT AUTHORITIES, AND THE NEW YORK CITY POLICE DEPARTMENT. THESE ITALIAN DRUG TRAFFICKERS HAD ENGAGED FOR YEARS IN THE ROUTINE AND RARELY INTERRUPTED IMPORTATION AND DISTRIBUTION OF HEROIN FROM SOUTHWEST ASIA THROUGH ITALY, SICILY, AND INTO THE UNITED STATES. THIS LONG-TERM INVESTIGATION WHICH ADDRESSED HEROIN TRAFFICKING IN NEW YORK, PENNSYLVANIA, NEW JERSEY, NORTH CAROLINA, FLORIDA, OHIO, TEXAS, AND WASHINGTON, D.C., EMPLOYED 39 COURT-ORDERED ELECTRONIC SURVEILLANCES.

OVER 200 HIGH-LEVEL ITALIAN TRAFFICKERS HAVE BEEN CHARGED WITH DRUG TRAFFICKING VIOLATIONS BOTH IN THE UNITED STATES AND ITALY.

THIS YEAR OUR ENHANCED REQUEST FOR DRUG INVESTIGATIONS TOTALS 79 SUPPORT POSITIONS AND $3.6 MILLION IN BUDGET AUTHORITY. WITH YOUR CONTINUED SUPPORT OF OUR DRUG PROGRAM, THE FBI WILL HAVE SIMILAR SUCH SUCCESSES AS THOSE MENTIONED ABOVE.

WHITE-COLLAR CRIME

THE FBI'S WHITE-COLLAR CRIME INVESTIGATIVE WORKLOAD CONTINUES TO GROW UNABATED; PARTICULARLY IN THE AREAS OF DEPARTMENT OF DEFENSE PROCUREMENT FRAUD, BANK FRAUD

AND EMBEZZLEMENT, PUBLIC CORRUPTION AND ELECTION LAW MATTERS, AND TOXIC WASTE FRAUD INVESTIGATIONS. THE ATTORNEY GENERAL'S ECONOMIC CRIME COUNCIL RECENTLY IDENTIFIED DEPARTMENT OF DEFENSE PROCUREMENT FRAUD AND BANK FRAUD AND EMBEZZLEMENT INVESTIGATIONS, WHERE THE LOSS EXCEEDS $100,000, AS THE TOP WHITE-COLLAR CRIME PRIORITIES. DEPARTMENT OF DEFENSE PROCUREMENT FRAUD INVESTIGATIONS INVOLVE BRIBERY, IMPROPER CHARGES FOR LABOR, DEFECTIVE PRICING, PRODUCT SUBSTITUTION, AND FALSE-TEST CERTIFICATIONS. A LONG-TERM FBI INVESTIGATION OF THE DEFENSE PERSONNEL SUPPORT CENTER IN PHILADELPHIA CULMINATED IN 1987 IN THE INDICTMENTS OF NINE INDIVIDUALS AND FIVE CORPORATIONS FOR VIOLATIONS OF FEDERAL RACKETEERING STATUTES, WIRE AND MAIL FRAUDS, AND FALSE STATEMENTS TO THE UNITED STATES GOVERNMENT. THESE INDICTMENTS ALLEGE THAT OVER $65 MILLION IN GOVERNMENT CONTRACTS WERE FRAUDULENTLY AWARDED. THE FBI'S HIGHEST-PRIORITY, BANK FRAUD AND EMBEZZLEMENT INVESTIGATIONS, INCREASED BY 127 PERCENT FROM 1982 TO 1987. DURING THIS SAME TIME PERIOD, SPECIAL AGENT RESOURCES ALLOCATED TO PUBLIC CORRUPTION INVESTIGATIONS -- WHICH EXCEEDED 1,350 CASES AT THE FEDERAL, STATE, AND LOCAL LEVEL -- GREW BY 27 PERCENT. JUST ONE INVESTIGATION DURING 1987 IN NEW YORK CITY RESULTED IN 48 SUBJECTS BEING CHARGED IN SYSTEMATIC KICKBACK SCHEMES. A RELATED CASE IN NEWARK RESULTED IN THE INDICTMENT OF TEN PUBLIC OFFICIALS FOR ALLEGEDLY PARTICIPATING IN KICKBACK SCHEMES. ENVIRONMENTAL CRIMES CASES EXPANDED FROM 48 CASES IN 1984 TO 168 AT THE END OF 1987. WE CURRENTLY HAVE ENVIRONMENTAL CRIMES INVESTIGATIONS RANGING FROM ILLEGAL STORAGE, TRANSPORTATION, AND DISPOSAL OF TOXIC WASTE BY UNSCRUPULOUS COMPANIES TO CORRUPTION OF PUBLIC OFFICIALS AND INFILTRATION OF DISPOSAL FACILITIES BY ORGANIZED CRIME FAMILIES.

IN SHORT, OUR REQUEST FOR THE WHITE-COLLAR CRIME PROGRAM TOTALS AN ADDITIONAL 119 SPECIAL AGENT AND 130 SUPPORT POSITIONS AND $10.7 MILLION IN BUDGET AUTHORITY.

FOREIGN COUNTERINTELLIGENCE

WE REQUIRE ADDITIONAL RESOURCES TO COPE WITH THE CONSTANT THREAT THAT HOSTILE ACTIVITIES OF FOREIGN INTELLIGENCE SERVICES PRESENT TO OUR NATIONAL SECURITY. RAPID TECHNOLOGICAL ADVANCES AND EMERGING DIPLOMATIC INITIATIVES UNDERSCORE THE NECESSITY FOR ENHANCEMENTS TO THE FOREIGN COUNTERINTELLIGENCE PROGRAM, WHICH IS ONE OF THE PRESIDENT'S HIGHEST-PRIORITY PROGRAMS.

ALTHOUGH THE FOREIGN COUNTERINTELLIGENCE PROGRAM HAS ENJOYED A SIGNIFICANT INCREASE IN RESOURCES OVER THE LAST FIVE YEARS, OUR RESPONSIBILITIES HAVE ALSO GROWN SIGNIFICANTLY OVER THE SAME PERIOD AND, INDEED, CONTINUE TO GROW. FOR EXAMPLE, IN 1982 THERE WERE ONLY 3,000 OFFICIALS AND 180 CRITERIA COUNTRY ESTABLISHMENTS; THESE NUMBERS HAVE INCREASED TO OVER 5,000 AND OVER 300, RESPECTIVELY. IT NOW APPEARS THAT THIS WORKLOAD WILL CONTINUE TO GROW AS A RESULT OF THE RECENTLY NEGOTIATED INTERMEDIATE-RANGE NUCLEAR FORCES TREATY WHICH WILL PERMIT ADDITIONAL SOVIET OFFICIALS TO ENTER THE COUNTRY.

DURING 1987, 11 INDIVIDUALS WERE ARRESTED THROUGH THE EFFORTS OF THE FOREIGN COUNTERINTELLIGENCE PROGRAM.

I STRONGLY ENDORSE THE USE OF FBI RESOURCES FOR THE HIGHEST PRIORITY INVESTIGATIONS AND THE FBI WILL CONTINUE TO FOCUS ON THOSE PRIORITIES. HOWEVER, THIS FOCUS AND THE 1987 REPROGRAMMING OF RESOURCES IS BEGINNING TO HAVE AN EFFECT ON THE GENERAL CRIMES PROGRAM. VIOLENT CRIMES AND SEXUAL EXPLOITATION OF CHILDREN, PART OF THIS PROGRAM, ARE EXPERIENCING INCREASED WORKLOAD WHILE DRAWING FEWER RESOURCES. THERE IS LITTLE, IF ANY, FLEXIBILITY REMAINING

TO DIVERT FIELD RESOURCES FROM THE GENERAL CRIMES PROGRAM TO NEW INITIATIVES.

I WOULD NOW LIKE TO ADDRESS SEVERAL SPECIFIC AREAS OF CONCERN REQUIRING BUDGET INCREASES FOR 1989.

CONFIDENTIAL CASE FUNDING

FIRST, CONFIDENTIAL CASE FUNDING IS THE LIFEBLOOD NECESSARY TO DEVELOP ALMOST EVERY MAJOR FBI INVESTIGATION. THESE RESOURCES PROVIDE ESSENTIAL FUNDING IN FAST-MOVING CASES TO PAY FOR ITEMS SUCH AS SHORT-TERM RENTAL OF SPACE AND VEHICLES, PURCHASE OF EVIDENCE, TELEPHONE CHARGES AND UTILITIES, AND TELEPHONE LEASE LINES RELATED TO TITLE III SURVEILLANCES. I CAN ASSURE YOU THAT THESE EXPENSES ARE CLOSELY SCRUTINIZED AND APPROVED ON A CASE-BY-CASE BASIS BY SPECIAL AGENTS-IN-CHARGE OR BY FBI HEADQUARTERS.

EXPENDITURES IN THIS AREA HAVE INCREASED FROM $3.9 MILLION IN 1982 TO $12.3 MILLION IN 1987. WE ARE REQUESTING AN ADDITIONAL $9.15 MILLION FOR CONFIDENTIAL CASE FUNDING TO ENSURE THAT OUR INVESTIGATIONS ARE NOT INHIBITED FOR LACK OF RESOURCES.

GENERAL AND SPECIAL SUPPORT POSITIONS

SECOND, AS IN PREVIOUS YEARS, THE FBI HAS A CONTINUING NEED FOR ADDITIONAL SPECIAL AND GENERAL SUPPORT EMPLOYEES. THESE EMPLOYEES PROVIDE CRITICAL ANALYTICAL AND TECHNICAL SERVICES TO OUR SPECIAL AGENTS, PRIMARILY IN OUR MOST COMPLEX AND HIGHEST PRIORITY CASES. THIS ENABLES US TO USE OUR SPECIAL AGENT RESOURCES WHERE THEY ARE MOST NEEDED, AND WHERE THEIR UNIQUE SKILLS AND TRAINING CAN BE MAXIMIZED. TYPICAL OF THIS CATEGORY OF SUPPORT EMPLOYEES IS OUR REQUEST THIS YEAR FOR 36 ORGANIZED CRIME INFORMATION SYSTEM ANALYSTS TO ENHANCE OUR DRUG INVESTIGATION CAPABILITIES. THESE ANALYSTS WOULD BE RESPONSIBLE FOR OPERATING THE AUTOMATED INFORMATION SYSTEMS THAT HAVE HELPED THE FBI TO DISSECT

SOPHISTICATED AND COMPLEX DRUG TRAFFICKING NETWORKS AND OTHER ORGANIZED CRIMINAL ENTERPRISES. THE USE OF KEY SUPPORT EMPLOYEES IS A BASIC ELEMENT OF THE FBI'S OVERALL EFFORT TO OBTAIN THE UTMOST COST EFFECTIVENESS AND PRODUCTIVITY FROM OUR SPECIAL AGENTS.

EXPERT SYSTEMS DEVELOPMENT

THIRD, ARTIFICIAL INTELLIGENCE AND THE USE OF EXPERT SYSTEMS ARE AMONG THE MOST PROMISING PROJECTS DESIGNED TO BOOST SPECIAL AGENT PRODUCTIVITY. THE SCOPE AND COMPLEXITY OF FBI INVESTIGATIONS AND OPERATIONS REQUIRE CAPABILITIES BEYOND CONVENTIONAL INFORMATION SYSTEMS. EXPERT SYSTEMS FILL INFORMATION GAPS, SUGGEST COURSES OF INVESTIGATIVE ACTION, PRESERVE INSTITUTIONAL KNOWLEDGE, AND FACILITATE THE DEVELOPMENT OF INVESTIGATIVE SKILLS OF NEW SPECIAL AGENTS. IN 1987, THE EXPERT SYSTEMS DEVELOPED BY THE FBI FOR THE EL PASO INTELLIGENCE CENTER WERE INSTRUMENTAL IN THE INTERDICTION AND SEIZURE OF OVER 26 TONS OF ILLEGAL DRUGS.

WE ARE REQUESTING $6.5 MILLION TO CONTINUE EXPERT SYSTEMS DEVELOPMENT.

AUTOMATED IDENTIFICATION SYSTEM

FOURTH, THE AUTOMATED IDENTIFICATION SYSTEM IS THE FBI'S LEADING PRODUCTIVITY INITIATIVE, FURNISHING IMPRESSIVE PREMIUMS IN THE PROCESSING OF FINGERPRINT CARDS. THE AUTOMATED IDENTIFICATION SYSTEM IS INCLUDED WITHIN THE PRESIDENT'S PRODUCTIVITY IMPROVEMENT PROGRAM BECAUSE OF ITS POTENTIAL FOR IMPROVING PRODUCTIVITY IN GOVERNMENT.

THE PROCESSING OF FINGERPRINT CARDS IS CRUCIAL TO THE ENTIRE CRIMINAL JUSTICE SYSTEM, INCLUDING ALL FEDERAL, STATE, AND LOCAL PROCEEDINGS. EXTENSIVE DELAYS IN PROCESSING CRIMINAL FINGERPRINT CARDS CAN RESULT IN THE RELEASE OF FUGITIVES BEFORE THEIR TRUE IDENTITIES ARE

DETERMINED, INTERFERENCE WITH CRIMINAL INVESTIGATIONS, AND OBSTRUCTIONS OF PROSECUTORIAL, JUDICIAL, PENAL, AND PAROLE OR PROBATION ACTIONS. THE AUTOMATED IDENTIFICATION SYSTEM WILL REPLACE MANUAL CARD AND DOCUMENT TRANSPORTATION. WITH FURTHER DEVELOPMENT THIS SYSTEM WILL PROVIDE AUTOMATIC FINGERPRINT CLASSIFICATION, FINGERPRINT IMAGE RETRIEVAL, AND VOICE-ACTIVATED DATA ENTRY. THE FBI'S CURRENT PROCESSING TIME WILL BE REDUCED FROM 14 DAYS TO ONE DAY. A STAFF OF SIMILAR SIZE WILL BE ABLE TO PROCESS AN ADDITIONAL 28 PERCENT OF WORK, RESULTING IN A COST AVOIDANCE SAVINGS OF 649 ADDITIONAL WORKYEARS BY 1997.

WE ARE REQUESTING AN ENHANCEMENT OF $6.38 MILLION TO CONTINUE DEVELOPMENT AND PROCUREMENT OF EQUIPMENT FOR THIS KEY PRODUCTIVITY INITIATIVE.

MR. CHAIRMAN, THIS CONCLUDES MY FORMAL STATEMENT; HOWEVER, I HAVE A MORE DETAILED STATEMENT OF OUR ACTIVITIES FOR THE RECORD. I'LL BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

NARRATIVE DETAIL AND SUPPORTING STATEMENT

Fiscal Year 1989 Appropriations Request
Federal Bureau of Investigation

The accompanying exhibits and narratives describe the funding requested for Fiscal Year 1989 and provide comparisons of this request with those of previous years. For 1989, the FBI is requesting a total funding of $1,503,307,000, 22,988 permanent positions, and 22,044 direct workyears. This request represents a net increase of $92,047,000, 532 positions, and 71 workyears over the base level for 1989.

LIST OF EXHIBITS

Exhibit No.	Title
1	Comparison of Personnel and Funds Required, 1988 vs. 1989
2	Summary of Adjustments to Base, FY 1989
3	Chart: Funding Request by Classification, FY 1989
4	Chart: FBI Appropriations, FYs 1980 - 1989
5	Chart: FBI Direct Funded Workyears, FYs 1980 - 1989
6	Equal Employment Opportunity within the FBI
7	Table: Recruitment of Minorities and Women
8	Organization of the FBI
9	Chart: Organization of the FBI
10	Foreign Liaison - Legal Attaches Program
11	Investigative Programs
12	Chart: FY 1987 Agent Workyear Use in Field Programs
13	Organized Crime Investigations
14	Table: Agent Time Spent by Major Category of Organized Crime Investigations: FYs 1983 - 1987
15	Chart: Organized Crime Convictions, FYs 1983 - 1987
16	Drug Investigations
17	Table: Agent Time Spent by Major Category of Drug Investigations, FYs 1983 - 1987
18	Chart: Drug Investigations Convictions, FYs 1983 - 1987
19	White-Collar Crime Investigations
20	Table: Agent Time Spent by Major Category of White-Collar Crime Investigations, FYs 1983 - 1987
21	Chart: White-Collar Crime Convictions, FYs 1983 - 1987

Exhibit No.	Title
22	Foreign Counterintelligence Investigations
23	Domestic Terrorism Investigations
24	Personal Crimes Investigations
25	Table: Agent Time Spent by Major Category of Personal Crimes Investigations, FYs 1983 - 1987
26	Chart: Personal Crimes Convictions, FYs 1983 - 1987
27	Fugitive Investigations
28	Table: Agent Time Spent by Major Category of Fugitive Investigations, FYs 1983 - 1987
29	Chart: Unlawful Flight and Other Fugitives Arrested by the FBI, FYs 1983 - 1987
30	General Government Crimes Investigations
31	Table: Agent Time Spent by Major Category of General Government Crimes Investigations, FYs 1983 - 1987
32	Chart: General Government Crimes Convictions, FYs 1983 - 1987
33	General Property Crimes Investigations
34	Table: Agent Time Spent by Major Category of General Property Crimes Investigations, FYs 1983 - 1987
35	Chart: General Property Crimes Convictions, FYs 1983 - 1987
36	Civil Rights Investigations
37	Chart: Civil Rights Convictions, FYs 1983 - 1987
38	Criminal Informant Program
39	Criminal Undercover Operations
40	Chart: Criminal Undercover Operations Convictions, FYs 1983 - 1987
41	Applicant Investigations for Other Federal Agencies

Exhibit No.	Title
42	Chart: Background Investigations for Other Federal Agencies, FYs 1983 - 1987
43	Investigative Support and State and Local Assistance
44	Training Programs
45	Laboratory Services
46	Chart: FBI Laboratory Examinations for Federal, State, and Local Agencies
47	Chart: FBI Laboratory Assistance to Non-Federal Law Enforcement Agencies, FY 1987
48	Fingerprint Identification
49	Chart: Fingerprint Receipts, FYs 1983 - 1987
50	Chart: Number of Fingerprint Cards on File
51	Records Management Program
52	Automated Data Processing and Telecommunications Operations
53	Chart: Field Office Computer Workstation Installations, FYs 1982 - 1989
54	National Crime Information Center
55	Chart: NCIC Annual Transactions, FYs 1983 - 1987
56	Uniform Crime Reporting Program
57	Chart: Crime in the United States, Percent Change, 1986 vs. 1982
58	Program Direction
59	Administrative Services
60	Chart: Special Agents Hired, FYs 1983 -1987

COMPARISON OF PERSONNEL AND FUNDS REQUIRED
FY 1988 vs. FY 1989

	Fiscal Year 1988	Fiscal Year 1989	Increase/ (Decrease)
PERSONNEL (FULL-YEAR EMPLOYEES):			
FBI Headquarters			
Special Agents........	881	890	9
Support Personnel.....	6,750	6,440	(310)
Total (FBIHQ)........	7,631	7,330	(301)
Field:			
Special Agents........	8,432	8,548	116
Support Personnel......	5,910	6,166	256
Total (Field)........	14,342	14,714	372
Total:			
Special Agents........	9,313	9,438	125
Support Employees.....	12,660	12,606	(54)
Total (FBIHQ & Field)............	21,973	22,044	71
FUNDS:			
PERSONNEL COMPENSATION.	$738,812,000	$759,744,000	$20,932,000
OTHER EXPENSES-			
Personnel Benefits....	185,149,000	192,555,000	7,406,000
Benefits to Former Personnel...........	361,000	361,000	---
Travel & Transportation of Persons.	33,206,000	36,085,000	2,879,000
Transportation of Things...............	7,525,000	8,617,000	1,092,000
GSA Rent..............	83,982,000	91,827,000	7,845,000
Rental Payments to Others...............	4,135,000	10,264,000	6,129,000
Communications, Utilities, & Other Rent................	58,249,000	68,596,000	10,347,000
Printing & Reproduction.........	2,435,000	2,523,000	88,000
Other Services........	96,244,000	109,706,000	13,462,000
Supplies & Materials..	35,924,000	37,459,000	1,535,000
Equipment.............	142,040,000	185,140,000	43,100,000
Lands & Structures....	---	---	---
Insurance Claims & Indemnities..........	360,000	360,000	---
Unvouchered...........	70,000	70,000	---
Subtotal, Other Expenses...........	$649,680,000	$743,563,000	$93,883,000
TOTAL, ALL EXPENSES.....	$1,388,492,000	$1,503,307,000	$114,815,000

Exhibit No. 1

SUMMARY OF ADJUSTMENTS TO BASE
FY 1989
(Dollars in thousands)

	Budget Authority
1988 as enacted	$1,388,492
Adjustments to base:	
Uncontrollable increases-	
Annualization of 1988 pay increase	$17,320
Health benefits	4,460
Postal service increase	812
GSA Rent	4,250
GSA recurring reimbursable services	100
FTS	384
GPO printing costs	45
General pricing level adjustment	11,976
Other	2,235
Total uncontrollable increases	$41,582
Decreases-	
Reduction for two compensable days	-$7,133
Federal Employees' Compensation Act (FECA) - Workers' Compensation	-402
Renovation to New York Field Office	-11,279
Total decreases	-$18,814
Total net adjustments to Base	$22,768
1989 Base	$1,411,260

Exhibit No. 2

Funding Request by Classification
Fiscal Year 1989

Total Request: $1, 503, 307

(Dollars in thousands)

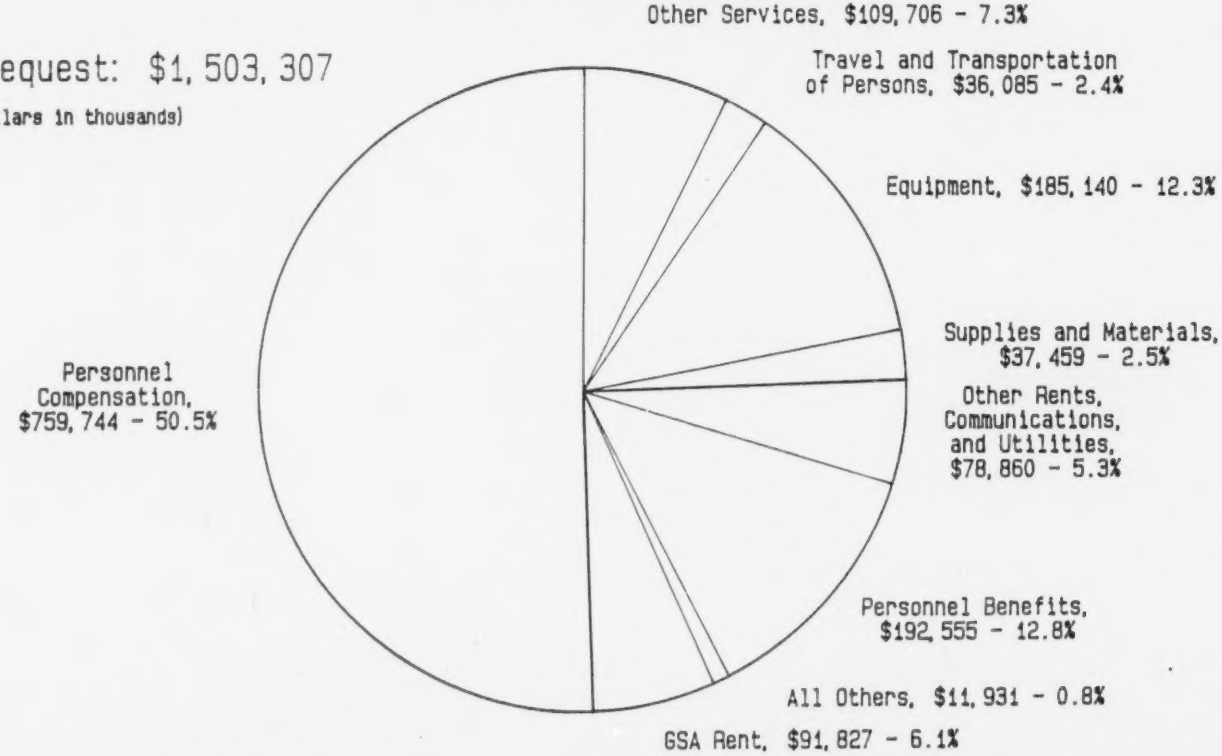


Exhibit No. 3

FBI Appropriations
Fiscal Years 1980 – 1989

In Millions of Dollars

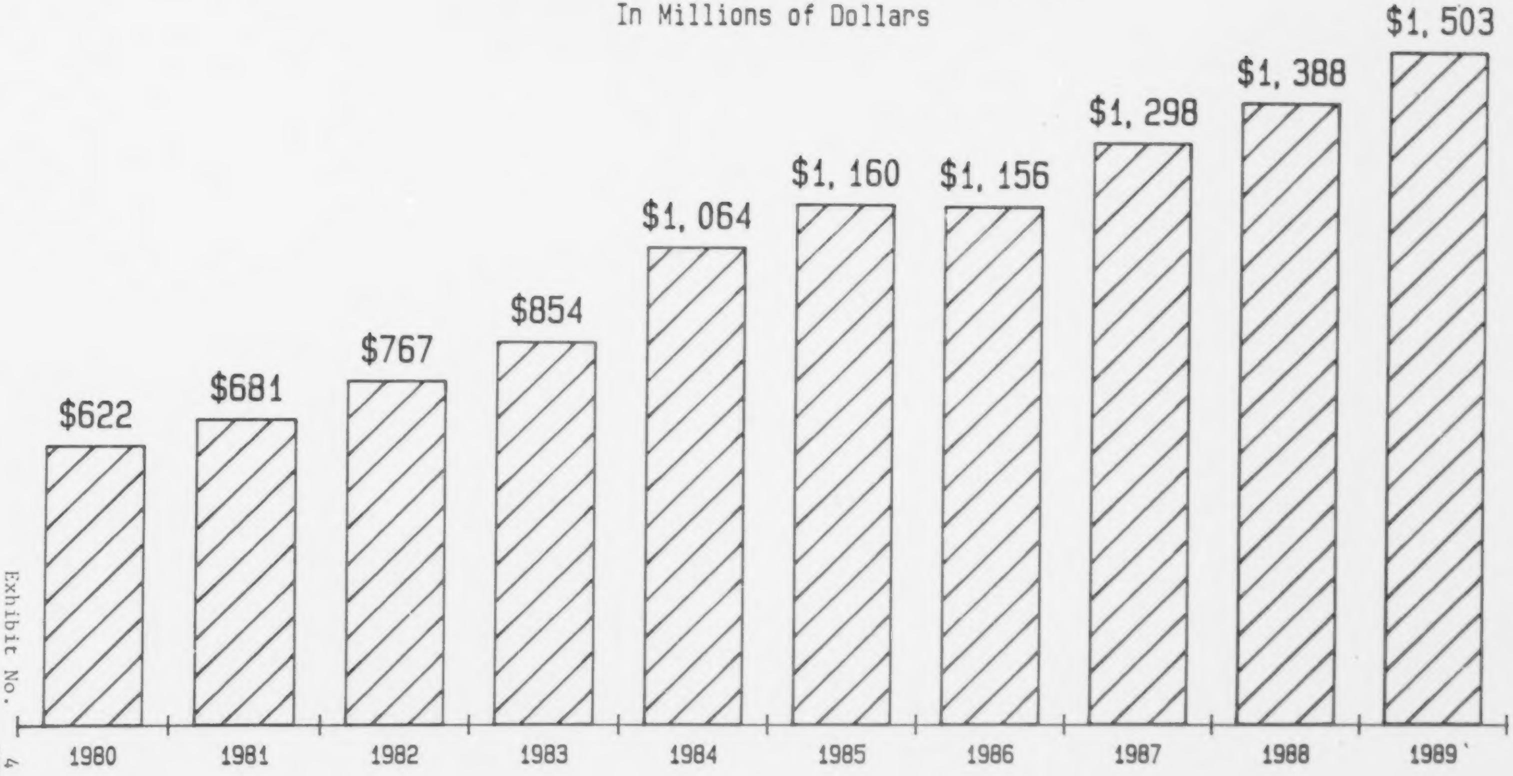


Exhibit No. 4

FBI Direct Funded Workyears
Fiscal Years 1980 - 1989

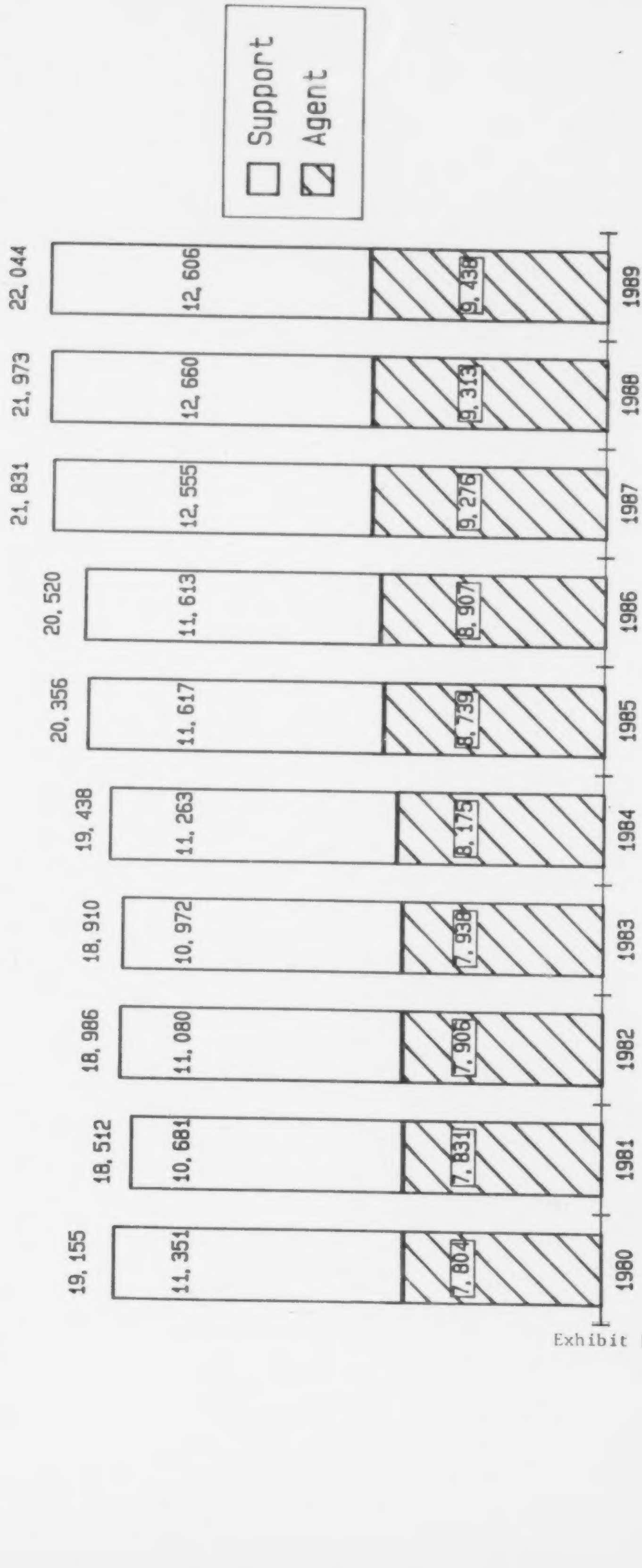


Exhibit No. 5

EQUAL EMPLOYMENT OPPORTUNITY WITHIN THE FBI

Equal Employment Opportunity (EEO) within the FBI encompasses several areas of responsibility. Through the Complaints Processing System every effort is made to properly handle complaints within Federal guidelines and resolve informally as many issues as feasible. Additionally, EEO Staff personnel promote awareness of the complaints system and the EEO process through lectures to new employees, selected in-service sessions, and annual division conferences. Special Emphasis Program Managers work to provide appropriate programs through which employees may participate in nationally acclaimed observances such as Hispanic Heritage Week and Black History Month to learn more about their culture and heritage.

The FBI is continuing its efforts to increase the number of women and minorities in its employ with particular emphasis on the Special Agent position. The following exhibit presents a profile of the FBI's work force by sex and race along with an indication of increases made among the Special Agent population since February 1978.

Exhibit No. 6

RECRUITMENT OF MINORITIES AND WOMEN

Minority and Women Special Agents as of 1/31/88

				Since 2/28/78	
	Field	FBIHQ	Total	Gain/ (Loss)	Percent Increase/ (Decrease)
Black	372	31	403	+259	+180%
Hispanic	385	21	406	+251	+162%
American Indian	36	5	41	+26	+173%
Asian American	107	6	113	+79	+232%
Women	764	38	802	+708	+753%

Percentage of Minority and Women Special Agents as of 1/31/88

	Number of Men	Percent of Total	Number of Women	Percent of Total	Total	Percent of Total
White	7,786	90.1%	694	86.5%	8,480	89.8%
Black	343	4.0%	60	7.5%	403	4.3%
Hispanic	371	4.3%	35	4.4%	406	4.3%
American Indian	36	0.4%	5	0.6%	41	0.4%
Asian American	105	1.2%	8	1.0%	113	1.2%
Totals	8,641	100.0%	802	100.0%	9,443	100.0%
All Minorities	855	9.9%	108	13.5%	963	10.2%

Number and Percentage of Minority and Women Support Personnel

	Number	Percent
Men	3,765	28.5%
Women	9,458	71.5%
Total Support Personnel	13,223	100.0%
Black	4,098	31.0%
Hispanic	347	2.6%
American Indian	19	0.1%
Asian American	149	1.1%
Total Minority	4,613	34.8%

Exhibit No. 7

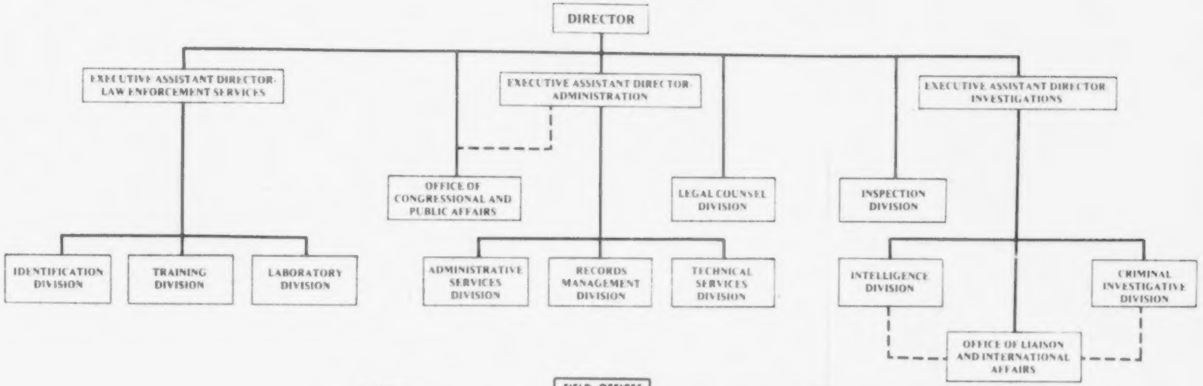
ORGANIZATION OF THE FBI

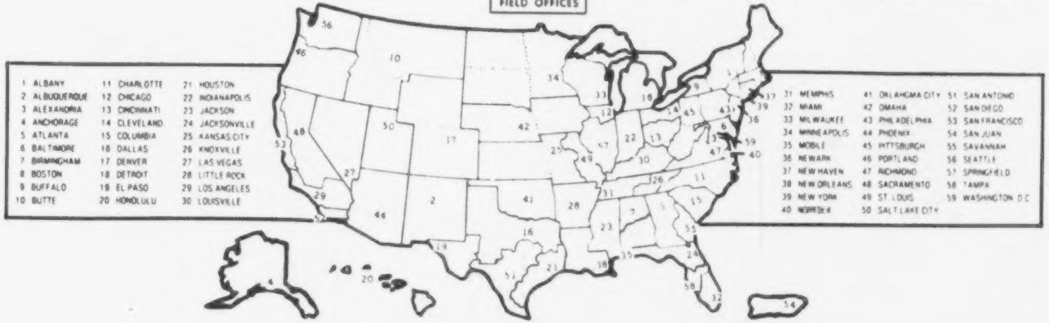
THE FBI IS A FIELD-ORIENTED ORGANIZATION IN WHICH TEN DIVISIONS AT FBI HEADQUARTERS PROVIDE PROGRAM DIRECTION, SUPPORT SERVICES, AND COORDINATION TO 59 FIELD OFFICES, APPROXIMATELY 400 RESIDENT AGENCIES, AND 14 FOREIGN LIAISON POSTS. EACH FIELD OFFICE, EXCEPT NEW YORK, WHICH IS HEADED BY AN ASSISTANT DIRECTOR, HAS A SPECIAL AGENT IN CHARGE WHO IS RESPONSIBLE FOR ALLOCATING PERSONNEL AND OTHER RESOURCES TO HANDLE EFFECTIVELY ALL FBI MATTERS WITHIN ITS GEOGRAPHICAL TERRITORY. AGENTS AT LIAISON POSTS ABROAD ACT AS A LIAISON IN CONNECTION WITH CRIMINAL AND OTHER MATTERS WITHIN THE FBI'S JURISDICTION. OF THE TOTAL AMOUNT REQUESTED BY THE FBI FOR 1989, 66.3 PERCENT, OR $996,180,000, IS FOR FIELD INVESTIGATIVE OPERATIONS AND THEIR COORDINATING ELEMENTS. THIS DOES NOT INCLUDE HEADQUARTERS SUPPORT, SUCH AS ADP OPERATIONS, EXECUTIVE DIRECTION, ADMINISTRATIVE SERVICES, RECORDS MANAGEMENT AND TECHNICAL FIELD SUPPORT AND EQUIPMENT FUNDING, AMONG OTHERS, ALL OF WHICH COMPLEMENT BOTH FIELD AND HEADQUARTERS ACTIVITIES.

EXHIBITS FOLLOW THAT SHOW THE ORGANIZATION OF THE FBI AND THE LOCATION OF FIELD OFFICES, THE LOCATION OF FOREIGN LIAISON POSTS, AND ADDITIONAL INFORMATION REGARDING THE LEGAL ATTACHES PROGRAM.

Exhibit No. 8

Organization of the FBI


DIRECTOR
EXECUTIVE ASSISTANT DIRECTOR-LAW ENFORCEMENT SERVICES
EXECUTIVE ASSISTANT DIRECTOR-ADMINISTRATION
EXECUTIVE ASSISTANT DIRECTOR-INVESTIGATIONS
OFFICE OF CONGRESSIONAL AND PUBLIC AFFAIRS
LEGAL COUNSEL DIVISION
INSPECTION DIVISION
IDENTIFICATION DIVISION
TRAINING DIVISION
LABORATORY DIVISION
ADMINISTRATIVE SERVICES DIVISION
RECORDS MANAGEMENT DIVISION
TECHNICAL SERVICES DIVISION
INTELLIGENCE DIVISION
CRIMINAL INVESTIGATIVE DIVISION
OFFICE OF LIAISON AND INTERNATIONAL AFFAIRS


FIELD OFFICES

1 ALBANY
2 ALBUQUERQUE
3 ALEXANDRIA
4 ANCHORAGE
5 ATLANTA
6 BALTIMORE
7 BIRMINGHAM
8 BOSTON
9 BUFFALO
10 BUTTE
11 CHARLOTTE
12 CHICAGO
13 CINCINNATI
14 CLEVELAND
15 COLUMBIA
16 DALLAS
17 DENVER
18 DETROIT
19 EL PASO
20 HONOLULU
21 HOUSTON
22 INDIANAPOLIS
23 JACKSON
24 JACKSONVILLE
25 KANSAS CITY
26 KNOXVILLE
27 LAS VEGAS
28 LITTLE ROCK
29 LOS ANGELES
30 LOUISVILLE
31 MEMPHIS
32 MIAMI
33 MILWAUKEE
34 MINNEAPOLIS
35 MOBILE
36 NEWARK
37 NEW HAVEN
38 NEW ORLEANS
39 NEW YORK
40 NORFOLK
41 OKLAHOMA CITY
42 OMAHA
43 PHILADELPHIA
44 PHOENIX
45 PITTSBURGH
46 PORTLAND
47 RICHMOND
48 SACRAMENTO
49 ST. LOUIS
50 SALT LAKE CITY
51 SAN ANTONIO
52 SAN DIEGO
53 SAN FRANCISCO
54 SAN JUAN
55 SAVANNAH
56 SEATTLE
57 SPRINGFIELD
58 TAMPA
59 WASHINGTON D.C.

EXHIBIT NO. 9

FOREIGN LIAISON - LEGAL ATTACHES PROGRAM

The Legal Attaches Program is designed to provide a continuing and prompt exchange of information and assistance with foreign law enforcement and other agencies in order to insure that the responsibilities of the FBI are met. The FBI will assist cooperative foreign agencies with their legitimate and lawful investigative interests in the United States.

For over 35 years the FBI has maintained posts abroad known as legal attache offices. There are currently 14 posts covering more than 80 countries, enabling the FBI's 59 field offices and Headquarters to receive a constant and prompt exchange of criminal and other information. Legal attaches develop and maintain close liaison with relevant and duly authorized law enforcement and other agencies of the countries covered to insure that the FBI's statutory investigative responsibilities are met in a timely and professional manner.

Prior to assigning FBI personnel to foreign countries, the concurrence of the United States Ambassador and the Foreign ministry of the host government must be obtained. The United States Department of State provides office space and other administrative support for the program on a reimbursable basis.

FBI FOREIGN LIAISON OPERATIONS

Liaison Post	Special Agents	Support Personnel
BERN, Switzerland	2	2
BOGOTA, Colombia	2	2
BONN, Germany	4	4
BRIDGETOWN, Barbados	1	1
CANBERRA, Australia	1	2
HONG KONG, British Crown Colony	1	1
LONDON, England	4	4
MEXICO CITY, Mexico	4	4
MONTEVIDEO, Uruguay	2	2
OTTAWA, Canada	4	4
PANAMA CITY, Panama	1	1
PARIS, France	3	2
ROME, Italy	3	3
TOKYO, Japan	2	1
TOTALS	34	33

Exhibit No. 10

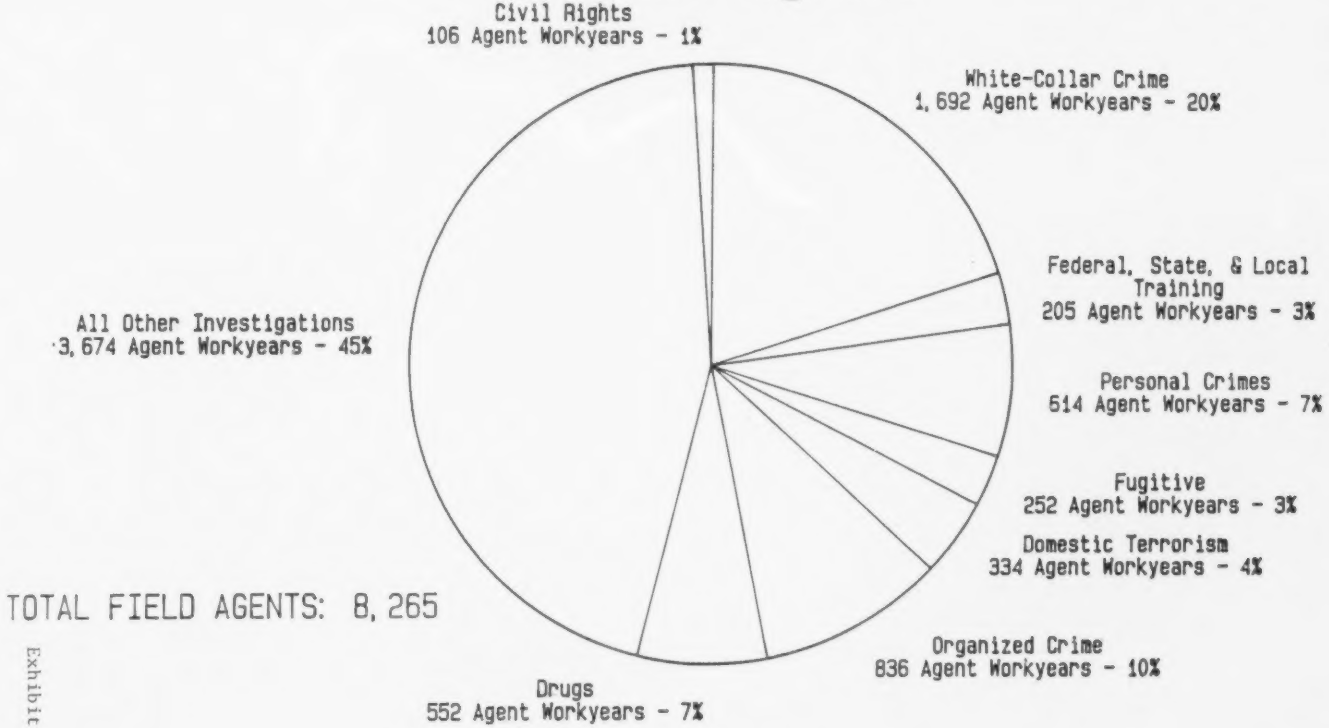
INVESTIGATIVE PROGRAMS

THE FBI'S PRINCIPAL BUDGET ACTIVITY IS CRIMINAL, SECURITY, AND OTHER INVESTIGATIONS. THIS BUDGET ACTIVITY INCLUDES RESOURCES FOR MANAGING AND COORDINATING FIELD INVESTIGATIONS AND RESOURCES FOR ALL FIELD INVESTIGATIVE OPERATIONS. FIELD OFFICES ARE RESPONSIBLE FOR ALL INVESTIGATIONS, INCLUDING THE NATIONAL PRIORITY LAW ENFORCEMENT AREAS OF ORGANIZED CRIME, WHITE-COLLAR CRIME, FOREIGN COUNTERINTELLIGENCE, AND TERRORISM. THIS BUDGET ACTIVITY WILL REQUIRE 16,008 POSITIONS AND $996,180,000 IN 1989 TO EFFECTIVELY CARRY OUT THE FBI'S INVESTIGATIVE MISSION. PROGRAM INCREASES ARE REQUESTED IN THE AREAS OF: WHITE-COLLAR CRIME, TO ADDRESS BANK FAILURE FRAUD, DEPARTMENT OF DEFENSE PROCUREMENT FRAUD, PUBLIC CORRUPTION, AND TOXIC WASTE FRAUD; ORGANIZED CRIME, TO SUPPORT OVERSEAS LEGAL ATTACHE WORKLOAD AND TO MONITOR AND TRANSCRIBE COURT-APPROVED ELECTRONIC SURVEILLANCES AND CONSENSUALLY RECORDED CONVERSATIONS; AND DRUGS, TO ENTER, RETRIEVE, AND ANALYZE INVESTIGATIVE INFORMATION IN THE ORGANIZED CRIME INFORMATION SYSTEM AND FOR CONFIDENTIAL EXPENDITURES, AMONG OTHERS.

THE FOLLOWING NARRATIVE INFORMATION AND EXHIBITS DESCRIBE ACTIVITIES WITHIN MAJOR INVESTIGATIVE PROGRAMS.

Exhibit No. 11

Fiscal Year 1987 Agent Workyear Use in Field Programs



TOTAL FIELD AGENTS: 8,265

Exhibit No. 12

Exhibit No. 13

ORGANIZED CRIME INVESTIGATIONS

The FBI's Organized Crime Program has as its goal the reduction of the sphere of influence that organized criminal groups exert over the citizens of the United States and to eliminate the adverse affect which results from that influence. This will be accomplished through an investigative program that approaches this problem in a systematic, coordinated and sustained manner.

Two of the primary objectives of the FBI's Organized Crime Program are (1) the determination of the extent of influence and control the LCN has established within the legitimate labor community in the United States and (2) the penetration of the hierarchy of the La Cosa Nostra by identifying the leadership and membership of the 25 LCN families. Funding for the Organized Crime Program will enable the FBI to pursue an aggressive and successful labor racketeering program that will remove the LCN's control of labor organizations and have a lasting and positive impact upon the nation's economy.

The unprecedented investigative and prosecutive successes against the LCN in recent years can be attributed to the evolution of the Enterprise Theory of Investigation. Experience has shown that prosecution of individuals for specific criminal acts has had little effect on the overall criminal organization. The Enterprise Theory of Investigation requires separate investigations conducted against individual members of a specific group or family be combined for prosecution, using both the criminal and civil provisions of the Racketeer Influenced and Corrupt Organization statute, commonly known as RICO. Under this approach the group or family is named as an enterprise. Convictions on this basis result not only in significant periods of incarceration, but provide for the seizure of assets accumulated by the enterprise through its illegal activity, and can prohibit members of the enterprise from associating with corrupted labor unions, infiltrated businesses, compromised institutions, or even with other members.

The recent prosecutions, resulting primarily from independent investigations directed at the hierarchy of the five New York LCN families and the "LCN Commission," the governing body of these LCN criminal enterprises, have exposed the LCN's corrupting influence within the International Brotherhood of Teamsters, the Laborers International Union of North America, the Hotel and Restaurant Employee's Union and the International Longshoreman's Association. The evidence presented in these cases has demonstrated that the LCN's influence in labor unions allows for the disruption of the competitive free market in various industries such as construction, trucking, air freight, and the cement industry.

Investigative and prosecutive successes have also confirmed a nationwide organized crime influence in many industries through local or national control of labor unions. The FBI intends to expand the use of the Enterprise Theory of Investigation to focus resources on these industries. The investigative strategy used by the FBI directed at the LCN influence in certain industries through labor union control has been refined through application.

As La Cosa Nostra (LCN) families and associates continue to show signs of stress due, in part, to law enforcement efforts, other organized criminal groups are emerging to fill the void. The FBI believes that groups of Asian origin pose the most significant threat. As with the LCN, investigations centering on Asian Organized Crime (AOC) groups have been directed at the groups as criminal enterprises and conducted on the basis of illegal activities such as corruption of public officials, illegal gambling, loansharking, money laundering, contract murders and drug trafficking.

The Organized Crime Information System (OCIS) is an integral part of the FBI's Organized Crime Program. OCIS is being implemented in additional field locations, allowing the FBI to further enhance its organized crime intelligence gathering capabilities through the use of a computer based network. The primary objective of OCIS is to improve the FBI's ability to collect, collate, analyze, and use available investigative data in furtherance of successful prosecution of organized criminal groups. Funding dedicated to the Organized Crime Program enables continued implementation of OCIS and provides FBI field offices analytical support personnel to operate the system.

- Organized Crime Program Accomplishments

As a result of a prosecution in New York of the leader of the Colombo LCN family, a civil complaint was filed charging 31 defendants with controlling a labor organization through a pattern of racketeering activities. This was the first civil action filed against an LCN family as an enterprise and the labor organizations they influence and control. One additional civil complaint has been filed since then, and additional civil filings are being pursued.

In addition, investigative efforts of the FBI's Organized Crime Program resulted in 674 convictions in 1987. Included in these convictions are a significant number of LCN members and their associates, union members, and public officials. Additionally, over $6,449,000 in fines were levied against convicted individuals; in excess of $2,730,000 in recoveries and restitutions were obtained; and over $9,315,000 in potential economic losses were prevented. A total of 696 indictments were recorded as a result of investigations in the program.

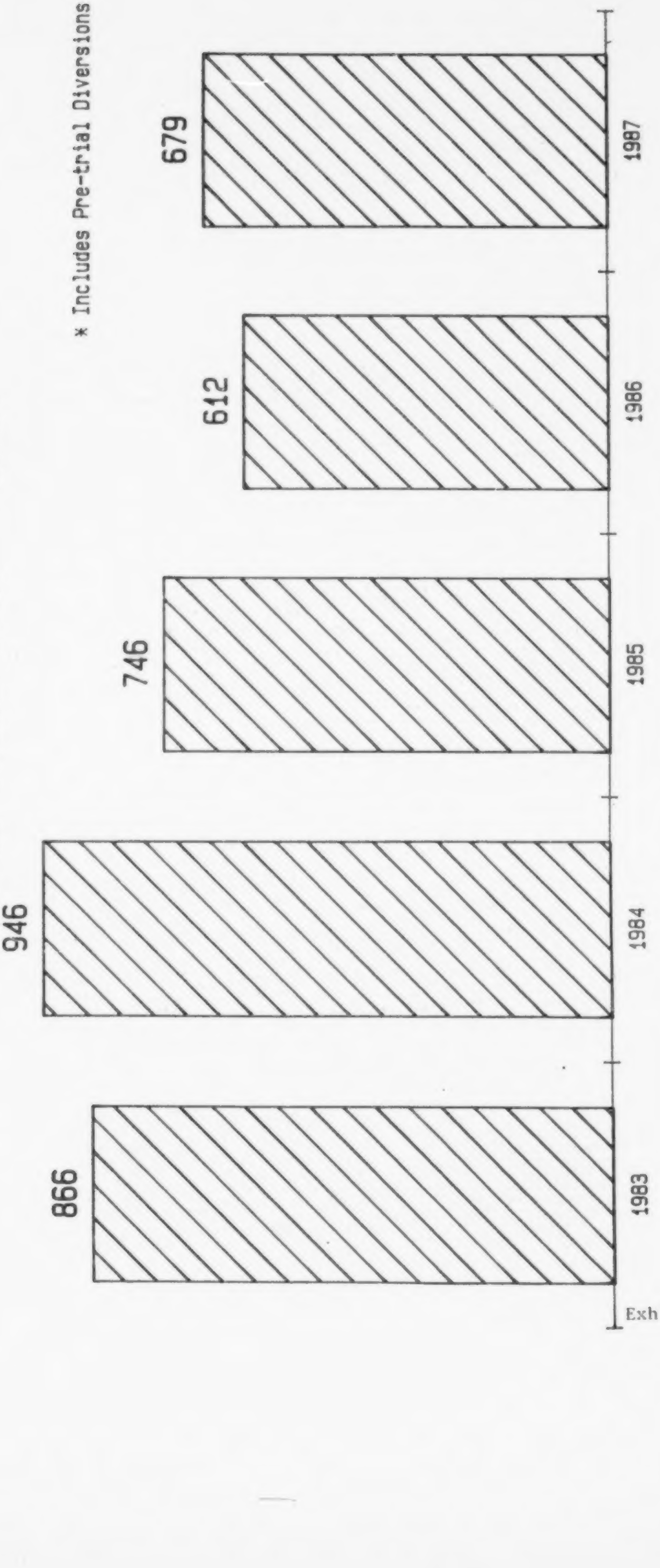
Following are exhibits showing agent time spent by major category of Organized Crime investigations and convictions obtained in Federal court.

AGENT TIME SPENT BY MAJOR CATEGORY OF
ORGANIZED CRIME INVESTIGATIONS
FISCAL YEARS 1983 - 1987
(Includes Field Supervisors)

	1983			1984			1985			1986			1987		
MAJOR CATEGORY	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL
La Cosa Nostra	684	62.5%	8.8%	739	67.1%	9.1%	660	71.0%	7.6%	713	76.3%	8.0%	605	72.4%	7.2%
Other Organized Criminal Groups	410	37.5%	5.3%	363	32.9%	4.4%	269	29.0%	3.1%	222	23.7%	2.5%	231	27.6%	2.8%
Total	1,094	100.0%	14.1%	1,102	100.0%	13.5%	929	100.0%	10.7%	935	100.0%	10.5%	836	100.0%	10.0%

Exhibit No. 14

Organized Crime Program
Convictions in Federal Court*
Fiscal Years 1983 – 1987



* Includes Pre-trial Diversions

Exhibit No. 15

DRUG PROGRAM INVESTIGATIONS

The single most significant crime problem facing American society today is the illegal importation, distribution, and use of narcotics. This evaluation is shared at all levels of government, including the White House, Congress, law enforcement officials and, according to national surveys, by the majority of the citizens in the United States. Statistics, White House directives, media coverage, public testimony, and congressional oversight committees clearly support this evaluation. In 1982, the FBI received concurrent jurisdiction to investigate violations of the criminal drug laws of the United States.

In 1986, the FBI implemented its National Drug Strategy. This strategy has resulted in a dramatic overall increase in the quality of drug investigations. FBI investigative efforts are focused on the following major drug trafficking groups largely responsible for supplying illegal drug markets in the United States: Colombian/South American, Mexican, Italian, Asian, National Outlaw Motorcycle Gangs, and major regional drug trafficking organizations. Significant results have been achieved and are continuing to be achieved by conducting long-term, sustained, multi-jurisdictional investigations using sophisticated investigative techniques against drug trafficking organizations.

While the FBI's investigative authority is limited to the United States and its possessions, the FBI maintains close liaison with law enforcement agencies of foreign governments in order to establish and follow through with a coordinated effort against the activities of organized crime figures.

- Drug Program Accomplishments

During 1987, 2,967 convictions and pre-trial diversions resulted from the FBI's Drug Program. Approximately $72.7 million in seizures and $32 million in forfeited assets were also recorded.

Following are exhibits showing agent time spent by major category of Drug Program investigations and convictions obtained in Federal court.

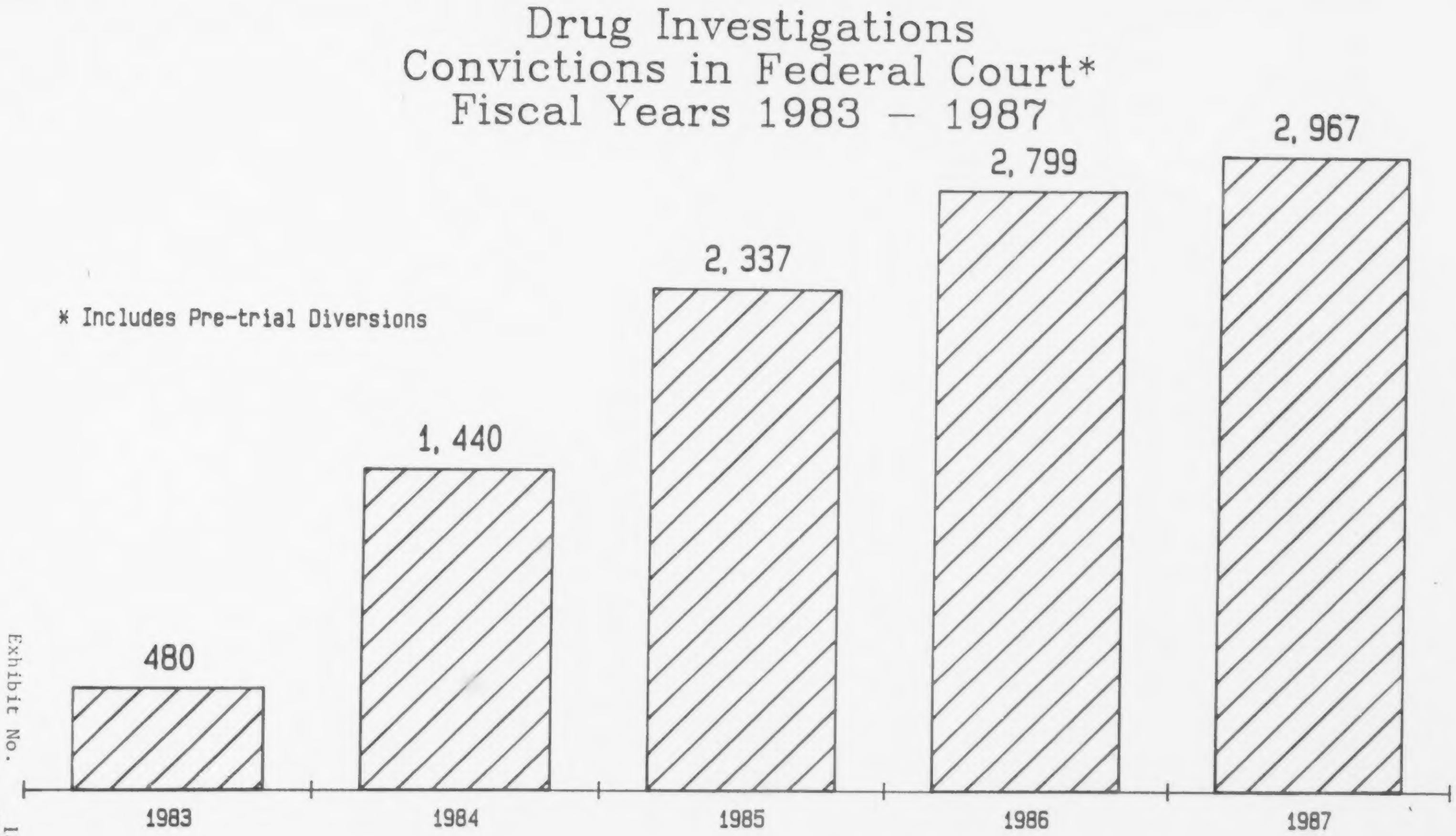
Exhibit No. 16

AGENT TIME SPENT BY MAJOR CATEGORY OF DRUG INVESTIGATIONS
FISCAL YEARS 1983 - 1987
(Includes Field Supervisors)

	1983			1984			1985			1986			1987		
MAJOR CATEGORY	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL
Drugs	520	74.0%	6.7%	565	63.8%	6.9%	541	50.1%	6.2%	517	50.6%	5.8%	552	51.3%	6.6%
OCDETF	183	26.0%	2.3%	321	36.2%	3.9%	538	49.9%	6.2%	504	49.4%	5.7%	525	48.7%	6.2%
Total	703	100.0%	9.0%	886	100.0%	10.8%	1,079	100.0%	12.4%	1,021	100.0%	11.5%	1,077	100.0%	12.8%

* Organized Crime Drug Enforcement Task Force.

Exhibit No. 17



Drug Investigations
Convictions in Federal Court*
Fiscal Years 1983 – 1987

* Includes Pre-trial Diversions

Exhibit No. 18

Exhibit No. 19

WHITE-COLLAR CRIME INVESTIGATIONS

White-Collar Crime (WCC) is defined as those illegal acts which are characterized by deceit, concealment, or violation of trust and which are not dependent upon the application or threat of physical force or violence. Such acts are committed by individuals and organizations to obtain money, property, or services; to avoid the payment or loss of money or services; or to secure personal or business advantage.

The Department of Justice has identified and ranked priority areas regarding WCC. These are crimes against: Federal, state, or local governments by public officials and private individuals; crimes against businesses, consumers, investors, and employees; and crimes affecting the health and safety of the general public.

In response to the above, the FBI established three major priorities within the White-Collar Crime Program: (1) Fraud Against the Government matters involving U.S. Government officials (and/or losses exceeding $25,000) and bribery and other public corruption involving Federal officials (Government Fraud); (2) Federal, state, and local public corruption (Public Corruption); and (3) Financial Crimes.

During the fiscal year ending September 30, 1987, approximately 20 percent of the total investigative personnel of the FBI were utilized in conducting white-collar crime investigations. This effort accounted for 4,443 convictions or 36 percent of the convictions obtained in all FBI investigations during fiscal year 1987. An additional 338 individuals were placed in pretrial diversion programs. In fiscal year 1987, more than $30.1 million in fines were levied and recoveries and restitutions totaled over $564.3 million.

- Governmental Fraud Subprogram

Governmental Fraud Subprogram investigations address allegations of fraudulent acts involving Federally funded programs or bribery/conflict of interest in the Executive Branch of Government. This top-ranked subprogram endeavors to investigate and seek prosecutions of those individuals who , through deceit or dishonesty, attempt to interfere with the lawful functioning of Federal agencies, programs, or projects. This subprogram has achieved its status as the top priority due to the concerns of the Attorney General's Economic Crime Council, the President's Council on Integrity and Efficiency, and FBI Headquarters. The investigations given "priority" status are those involving frauds in excess of $25,000 and especially those involving the Department of Defense or the Department of Health and Human Services. Allegations of bribery and/or conflict of interest on the part of Federal employees are considered extremely sensitive and must be addressed immediately.

In addition to the corruption of Federal officials, this subprogram also addresses criminal activity in many Federally funded programs. Particular emphasis is placed upon investigation of illegal activities involving Federally funded Defense, Health Care, and Housing programs. Emphasis is also placed upon investigation of environmental crimes matters. The investigation of Defense-related matters includes emphasis on procurement frauds. Bribery and kickback investigations have seen continuous growth in the past year, as FBI investigators make use of recently enacted legislation which specifically prohibits kickback solicitations by prime contractors and Government employees. Health care fraud investigations focus upon health care providers such as physicians, pharmacies, and other health care entities that bill the Federal Government for health care related services. These investigations focus upon health providers who illegally bill for services not rendered or pay kickbacks from Federal funds. Investigation of housing matters focuses upon Veterans Administration and Department of Housing and Urban Development funded programs. Many recent investigative accomplishments in housing matters relate to loan origination schemes perpetrated by realtors or financiers who have provided false statements to the Veterans Administration or the Department of Housing and Urban Development in order to obtain Federal funds. Environmental crimes investigations focus upon the illegal disposal of hazardous wastes. The number of allegations concerning this criminal activity has increased dramatically in recent years. In addition to these Government fraud investigations, the FBI investigates fraud with regard to Federally funded Transportation, Education, and other miscellaneous programs.

The FBI's investigation of these matters is pursued, in many instances, on a joint or cooperative basis with other investigative agencies. The Offices of Inspectors General in particular are active in joint investigations, particularly in Defense and Housing matters. These joint investigative efforts will continue as will investigations where the FBI singly investigates significant Government fraud activity.

- Public Corruption Subprogram

Public Corruption involves the investigation of systematic corruption by Federal, state, and local executive and management level public officials. Public corruption can be broadly defined as occurring when any elected or appointed public official (local, state, or Federal) acting for or in behalf of his/her public office asks, demands, solicits, seeks, accepts, receives, or agrees to receive anything of value in return for being influenced in the performance of any official act. The necessary evidence to support an allegation of public corruption must often be gained through the testimony of informants and cooperating witnesses, the use of consensually monitored conversations, and the use of undercover operations. As these investigative techniques become known through their exposure during subsequent courtroom proceedings, they must be replaced by new and often more labor intensive techniques. Electronic and operational countermeasures are now being employed by some of these same sophisticated white-collar criminals.

While FBI investigations involve officials at all levels of government, investigative priority and emphasis are provided to those matters involving Federal officials. Due to the large number of local office holders, the volume of matters under investigation has traditionally involved more local and county governments. Public corruption investigations are, for the most part, not undertaken by state and local authorities for a number of reasons, and such investigations have become a major component of the FBI's White-Collar Crime Program.

The FBI's investigative response to public corruption continues to be immediate, aggressive, and thorough. Prior to initiating an investigation, a careful evaluation is made regarding the credibility and motivation of the individual making the allegations and of the facts that are available to corroborate or refute these allegations. The goal of each investigation is to resolve whether or not the allegations are true. Due regard is given to the integrity and reputation of the public official alleged to have engaged in criminal conduct.

- Financial Crimes Subprogram

Financial crime investigations primarily involve frauds, thefts, and embezzlements occurring within or against the national and international financial community. Priority matters currently of particular concern are bank failures or bank (and savings and loan association) mergers in lieu of failure caused by fraud and embezzlements perpetrated by bank officers, owners, or major stockholders. A 1984 congressional study found actual or probable criminal misconduct by officers, directors, or other insiders in 61 percent of recent bank failures and concluded that officials of failed or problem banks usually escape prosecution or sanctions by the Government. This study indicated that during 1983, criminal activities by bank officers, directors, and owners contributed to 35 bank failures.

To illustrate the scope of the bank failure problem, from January 1, 1981, through December 31, 1986, a total of 657 commercial banks and savings and loan institutions have been closed or merged with other financial institutions in lieu of failure. Of this total, 293, or 45 percent, occurred during the period from January 1, 1985, through December 31, 1986. Federal regulatory agencies forecast a continuing pattern of bank failures.

The pending caseload of bank fraud and embezzlement investigations involving losses or loss exposure of $100,000 or more has increased 50% over the past three years, from 2,253 as of the end of fiscal year 1984 to 3,393 as of the end of fiscal year 1987. During fiscal year 1987, bank fraud and embezzlement matters consumed 356 Agent workyears, which represented approximately 25% of total White-Collar Crime Program investigative resources. The nature, scope and economic impact of the bank fraud problem requires a continued commitment of FBI resources.

The Fraud by Wire statute is one of the most effective tools available to combat national and international fraud schemes. These schemes include advance fee loan frauds, Ponzi investment frauds, pyramid business frauds, boiler rooms, and numerous other types of fraud. The advance fee loan scheme preys upon the small businessman, the farmer, or entrepreneur who is vulnerable because of a desperate need for cash. An example of a significant national fraud case which utilized the fraud by wire statute, as well as bank fraud and embezzlement statutes, is a case which resulted in the conviction of seven former officers of ESM Government Securities, Incorporated, Ft. Lauderdale, Florida, and the former managing partner of the Miami office of Alexander Grant and Co., Certified Public Accountants. These individuals were convicted of participating in a nationwide fraud scheme which caused losses of over $300 million to financial institutions, municipalities, and creditors. Fraudulent bankruptcy, computer crimes, and stolen securities violations, as well as new or enhanced statutes under the Comprehensive Crime Control Act of 1984, are also addressed in this subprogram.

The FBI is supporting efforts of the Executive Office for United States Trustees (EOUST), Department of Justice, to improve results in the detection, investigation and prosecution of bankruptcy crimes nationwide. Legislation in October 1986, gave the EOUST responsibility for administration of the bankruptcy system nationwide, through United States Trustees to be located in 21 regional offices. Efforts in this area are directed at improved cooperation and coordination from initiation of a criminal referral to direct support of the investigation and prosecution of bankruptcy crimes.

FBI WCC investigators and accounting technicians, by virtue of their formal education and experience in accounting investigations, are highly qualified to conduct these investigations. Financial crimes matters such as bank failure and major fraud investigations often require the concentration of relatively large amounts of FBI personnel for extended periods of time. Because of the voluminous amounts of documentary evidence encountered in these types of investigations, an electronic data processing system, the Investigative Support Information System (ISIS), is often required to assist investigators in collating evidence and testimony on complex issues, events, and the activities of multiple defendants.

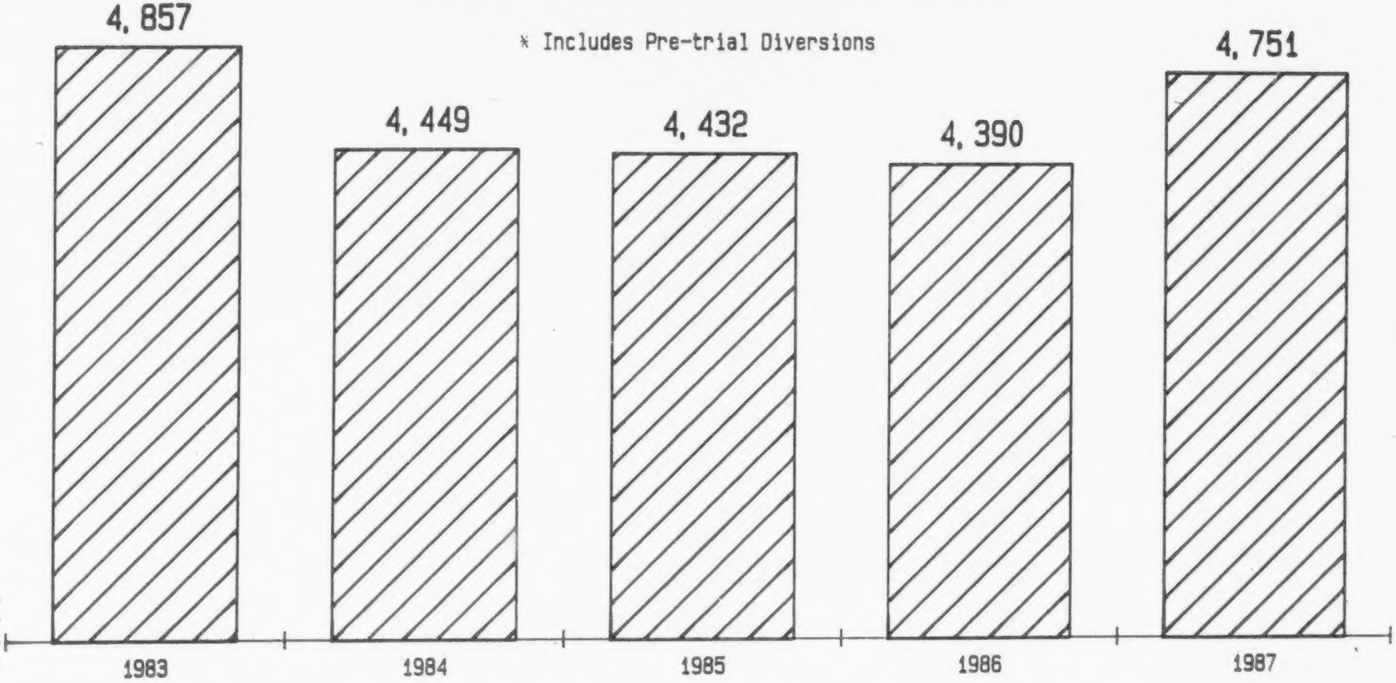
The FBI also conducts extensive investigations in connection with the Government's prosecution of antitrust matters and the litigation of civil matters.

AGENT TIME SPENT BY MAJOR CATEGORY OF
WHITE-COLLAR CRIME INVESTIGATIONS
FISCAL YEARS 1983 - 1987
(Includes Field Supervisors)

	1983			1984			1985			1986			1987		
MAJOR CATEGORY	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL
Governmental Fraud	290	19.6%	4.2%	296	20.6%	3.9%	314	20.5%	3.9%	356	21.6%	4.3%	366	21.6%	4.4%
Labor Matters	28	1.9%	0.4%	21	1.5%	0.1%	20	1.4%	0.1%	20	1.2%	0.2%	34	2.0%	.4%
Public Corruption	245	16.5%	3.4%	225	15.6%	2.9%	256	16.7%	3.2%	315	19.2%	3.8%	306	18.1%	3.6%
Financial Crimes	810	54.6%	11.6%	852	59.3%	10.9%	891	58.3%	10.9%	915	55.6%	11.1%	942	55.7%	11.2%
Other Matters	110	7.4%	1.5%	44	3.0%	0.6%	48	3.1%	0.5%	40	2.4%	0.5%	44	2.6%	.5%
Total	1,483	100.0%	21.1%	1,438	100.0%	18.4%	1,529	100.0%	18.6%	1,646	100.0%	19.9%	1,692	100.0%	20.1%

Exhibit No. 20

White-Collar Crime Program Convictions in Federal Court* Fiscal Years 1983 - 1987



* Includes Pre-trial Diversions

Exhibit No. 21

FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

The FBI is charged with responsibility for foreign counterintelligence (FCI) investigations within the United States. This function is derived from various criminal statutes, such as the Espionage Statues and Foreign Agent Registration Act. In addition, FCI investigations are conducted in accordance with Presidential Directives issued pursuant to the inherent power of the President to protect and defend the Constitution of the United States. Executive Order 12333, issued December 4, 1981, is the current Presidential authority for the FBI's FCI investigations. In compliance with existing Executive Orders, the Attorney General has established guidelines for the conduct of FCI activities in the United States. The first guidelines became effective May 28, 1976. Within the parameters of these guidelines and statutes, the FBI is given discretion to develop and implement the FCI program.

The mission of the FCI program is to identify and neutralize the threat posed by hostile intelligence services and their agents in the United States. Activities to accomplish this mission include penetration, disruption, expulsion, arrest, and prosecution.

In the course of fulfilling its FCI mission, the FBI serves the policy making levels of the United States Government by providing an overview of foreign intelligence activities within the United States. As a result, Government officials are assisted in making informed decisions concerning national security requirements. The FBI also furnishes analyses to other agencies of the Executive Branch that have specific intelligence responsibilities, enhancing the effectiveness of these agencies in accomplishing their missions. FBI investigative responsibilities have expanded due to a much wider geographic access, increase in the numbers of individuals requiring investigations, and the use of sophisticated technical collection equipment on the part of foreign intelligence personnel.

The FBI has a defined role within the Intelligence Community. Inasmuch as foreign-directed intelligence activities are transnational in nature, the FBI must coordinate investigative operations with other United States agencies and cooperating foreign police and security services in order to insure the accomplishment of established FCI objectives. This liaison is a most integral component of the FBI's FCI program.

Exhibit No. 22

Exhibit No. 23

DOMESTIC TERRORISM INVESTIGATIONS

Terrorism investigations are undertaken in order to detect, prevent and/or react to unlawful, violent acts and criminal activities of domestic terrorist groups or individuals. These groups are based and operate entirely within the United States and direct their activities at elements of our Government or population with the intent to either overthrow the United States Government, interfere with the activities of a foreign government in the United States, substantially impair the functioning of the Federal Government, a state government or interstate commerce, or deprive Americans of their civil rights, as guaranteed by the United States Constitution. The authority for these investigations is derived from Federal statutes and orders from the President or the Attorney General. In addition, violations of certain Federal statutes, which would logically relate to terrorism, such as bombing matters, nuclear extortion, hostage-taking, sabotage, and the protection of foreign officials, are handled within the Terrorism Program.

The FBI defines terrorism as the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives. In order to combat terrorism, quality intelligence must be gathered and acted upon to prevent planned violence from occurring. The intelligence process involves the collection and analysis of information regarding groups or individuals who have demonstrated a willingness and capability to engage in illegal terrorist activity.

Domestic terrorism investigations are premised upon the fundamental duty of government to protect the public against criminal violence intended to destroy the constitutional system or to deny any segment of the population the exercise of their Constitutionally guaranteed rights. This duty must be performed with care in order that the government itself not act in such a way as to stifle legitimate forms of dissent. To ensure the propriety of investigations, the Attorney General issued investigative guidelines for conducting Domestic/Security Terrorism Investigations in April 1983. Domestic security investigations are used to assemble intelligence information on terrorists but with restrictions necessary to protect the rights of United States citizens. The approach taken to these investigations is similar to that taken in other racketeering investigations. That is to say, the focus is on the unlawful activity of the group rather than on the motives. If it can be reasonably established that two or more persons are allied in the commission or planning of unlawful violent acts, they can be investigated for involvement in an ongoing criminal enterprise. Further, the investigation may extend to persons supporting the criminal enterprise by providing safehouses, money, weapons, or the like. These guidelines establish a consistent policy concerning when an investigation may be initiated and the methods that may be employed in conducting the investigation.

The Attorney General's guidelines permit the government to actively combat terrorism while at the same time avoid the repressive measures that the terrorists seek to provoke in their efforts to influence the government. As of February 26, 1988, there were 15 organizations under investigation based on these guidelines.

Although the number of actual terrorist incidents recorded in the United States has generally declined, this favorable trend should not be regarded as a signal that eradication of violent terrorism is close at hand. More properly, the reduction in terrorist incidents in the United States closely corresponds to the FBI's acceleration of an all-out counterterrorist effort which has been characterized by the steady commitment of resources, enhanced counterterrorism training, and more efficient use of an increasingly effective intelligence base. To successfully counter the increasing threat, the Director of the FBI decided to elevate terrorism to the status of a national priority program effective October 1, 1982.

The FBI is committed to a program of intensified investigative activity which will continue to successfully counter the violent intentions of terrorist organizations deployed in the United States. The arrest, prosecution, and incarceration of key leadership elements of various terrorist organizations coupled with successful preventative measures has significantly contributed to the decline in the number of terrorist incidents committed in the United States. It would, as stated, be incorrect to conclude from these counterterrorism successes that the pernicious threat of terrorism in the United States has been all but permanently eradicated. The United States, because of its size, border, open society, and official involvement in the global political arena, is constantly vulnerable to terrorist attacks. Terrorist infrastructures and support networks are in place and certain terrorist groups may be motivated to initiate attacks in the United States in response to United States foreign policy initiatives or out of maniacal desire to neutralize dissident behavior which may appear in emigre communities found in almost every corner of the Nation.

The FBI's counterterrorism efforts, if they are to achieve desirable results, must be viewed as a long-term proposition. It takes years and much effort to build necessary intelligence bases, the networks of cooperating citizens, and cadres of experienced, trained special agents. It is not, therefore, the FBI's intention to remove the pressure from those elements of society that pose a threat to American persons or interests. On the contrary, for the foreseeable future, counterterrorism will remain a national priority program. All FBI investigative activity is carried out with the objective of minimizing the threat of terrorism to the American people and, as evidenced by the diminished level of terrorist activity in recent years, the FBI's preemptive efforts have been very successful.

PERSONAL CRIMES INVESTIGATIONS

Through Personal Crimes Program investigations, the FBI becomes directly involved in the effort to stem the incidence of violent crimes that affects communities across the Nation. Through this program the FBI investigates criminal offenses sharing the common characteristics of threatened or actual injury or loss of life. These crimes, which include threats, assaults, kidnapings, and assassination of the President, Vice President, Executive Department heads, Supreme Court Justices, Members of Congress, other designated Federal officials, their families, and Federal law officers; kidnapings; extortions; bank robberies; tampering with consumer products; and crimes aboard aircraft, among others, often have considerable impact on the communities and individuals involved due to their potential for violence, the high public profile of their victims, and the opportunity for substantial monetary losses.

Investigative accomplishments attributable to the Personal Crimes Program contributed substantially to the overall performance and success of the FBI during 1987. During this period, 2,028 informations and indictments were filed, 1,411 arrests and locates were made, and 2,054 convictions were obtained in Federal court. Ninety-six percent of these convictions were for felony offenses. FBI investigations also contributed to the convictions of another 607 persons who were prosecuted in state or local court for personal crimes in 1987. The following are representative of major program accomplishments during 1987:

In June of 1986, two people, both of Auburn, Washington, died as a result of ingesting commercial cold-medication capsules that had been laced with cyanide. A lengthy and extensive investigation by the FBI resulted in the widow of one of the victims being indicted in late 1987 for Tampering with a Consumer Product (resulting in death). The FBI investigation indicates that the widow killed her husband with cyanide laced capsules and then put cyanide laced medication back on store shelves to draw attention away from the death of her husband. The second death was the result of a consumer buying the contaminated capsules and ingesting them.

In November of 1987 a husband and wife were convicted in Federal court in Northern Virginia, for multiple violations of Interstate Transportation of Obscene Matter under the RICO statute. This was the result of an extensive FBI obscenity investigation and also resulted in the forfeiture of 1.8 million dollars to the U. S. Government.

Following are exhibits showing agent time spent by major category of Personal Crimes Program investigations and convictions obtained in Federal court.

Exhibit No. 24

AGENT TIME SPENT BY MAJOR CATEGORY OF PERSONAL CRIMES INVESTIATIONS
FISCAL YEARS 1983 - 1987
(Includes Field Supervisors)

	1983			1984			1985			1986			1987		
MAJOR CATEGORY	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL
Kidnaping	66	10.2%	.9%	122	19.4%	1.5%	90	14.2%	1.1%	84	12.8%	1.0%	78	12.7%	.9%
Extortion/Hobbs Act-Commercial	92	14.1%	1.3%	66	10.4%	.8%	105	16.6%	1.3%	70	10.7%	.9%	53	8.7%	.6%
Bank Robbery and Related Crimes	432	66.5%	6.2%	396	62.7%	4.7%	386	61.1%	4.8%	377	57.6%	4.7%	382	62.3%	4.6%
Crime Aboard Aircraft	11	1.7%	.1%	11	1.7%	.1%	15	2.3%	.2%	12	1.9%	.2%	15	2.4%	.2%
Tampering with Consumer Products				8	1.2%	---	1	.2%	---	33	5.1%	.4%	13	2.1%	.2%
Theft of Controlled Substances							6	1.0%	.1%	3	.5%	---	4	.6%	---
Assaulting or Killing a Federal Officer	42	6.5%	.6%	17	2.9%	.2%	17	2.7%	.3%	24	3.6%	.3%	18	2.9%	.2%
Assaulting, Killing, or Kidnaping a Member of Congress, Supreme Court Justice, or Executive Department Head	3	.4%	.1%	3	.5%	.1%	2	.3%	---	3	.4%	---	3	.5%	---
Assaulting, Killing, or Kidnaping the President, Vice President, or Staff	2	.3%	.1%	3	.5%	.1%	2	.3%	---	1	.1%	---	1	.2%	---
White Slave Traffic Act, Interstate Transportation of Obscene Matter, Sexual Exploitation of Children										37	5.7%	.5%	33	5.3%	.4%
All Others	2	.3%	.1%	5	.7%	---	8	1.3%	.1%	10	1.6%	.1%	14	2.3%	.2%
Total	650	100.0%	9.4%	631	100.0%	7.5%	632	100.0%	7.9%	654	100.0%	8.1%	614	100.0%	7.3%

Exhibit No. 25

Personal Crimes Program
Convictions in Federal Court*
Fiscal Years 1983 – 1987

* Includes Pre-trial Diversions

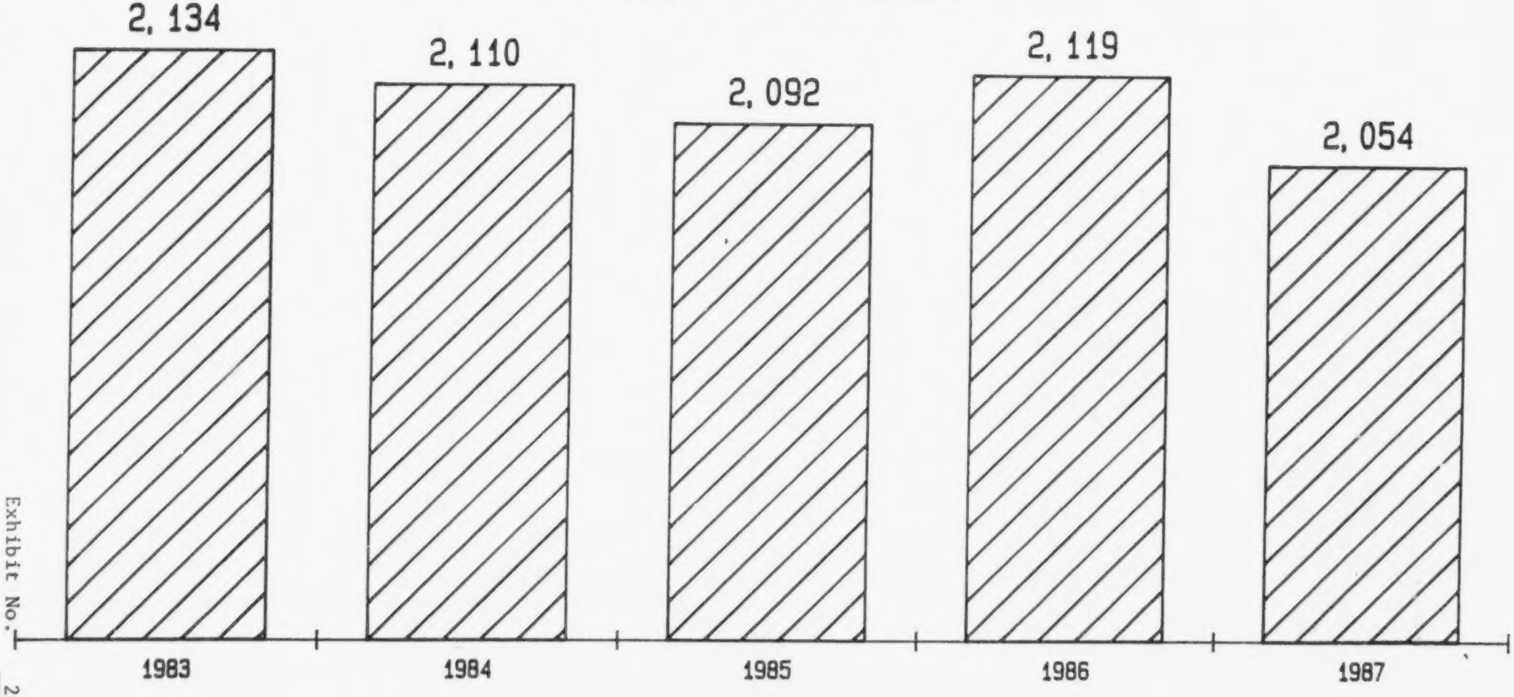


Exhibit No. 26

FUGITIVE INVESTIGATIONS

The FBI's Fugitive Program provides direct assistance, at several different levels, to other Federal, state and local law enforcement agencies. Investigative assistance under this program during 1987 yielded a total of 862 arrests by FBI Agents and the locating of 507 individuals wanted by other law enforcement authorities.

Under provisions of the Unlawful Flight statute, the FBI assists state and local law enforcement agencies seeking felons who cross state boundaries to avoid arrest, prosecution, or confinement. Typically, these fugitives are wanted for violent crimes such as murder, armed robbery, aggravated assault, and rape, while others are charged with narcotics law violations or major property thefts. Individuals wanted for these crimes often comprise the "hard-core" career criminal element whose unchecked activities pose a threat to community safety and property. Additionally, this statute is also used as the basis for investigating the unlawful taking of children by natural parents in defiance of custody decrees. During 1987 the FBI initiated 2,436 new Unlawful Flight investigations at the request of state and local law enforcement, of which 267 were related to custodial kidnapings. Investigative efforts in these cases, as well as 585 other Unlawful Flight cases pending at the beginning of the year, resulted in the arrests of 862 individuals by FBI Agents and the locating of another 507 wanted persons.

As part of the FBI's initiative against illegal narcotics traffickers, investigations are conducted to locate and apprehend major Drug Enforcement Administration (DEA) fugitives. These fugitives are Class I and Class II narcotics law violators for whom Federal warrants are outstanding. Since this cooperative effort began in late 1981, DEA has referred 1,077 individuals to the FBI for investigation, including 206 in 1987. Fifty-four DEA fugitives were apprehended by the FBI in 1987. The FBI also provides assistance to other Federal agencies, at their request.

The FBI also provides assistance to the United States armed forces in locating military personnel deserting under aggravated circumstances. Requests from local law enforcement agencies for laboratory and forensic assistance, as well as locating individuals for interview, are also serviced.

Following are exhibits showing agent time by major category of Fugitive investigations and unlawful flight and other arrests made.

Exhibit No. 27

AGENT TIME SPENT BY MAJOR CATEGORY OF FUGITIVE INVESTIGATIONS
FISCAL YEARS 1983 - 1987
(Includes Field Supervisors)

	1983			1984			1985			1986			1987		
MAJOR CATEGORY	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL
Unlawful Flight to Avoid Prosecution-Violent Crime	174	49.6%	2.5%	156	64.8%	1.9%	152	61.8%	1.9%	150	61.2%	1.9%	158	62.7%	1.9%
Unlawful Flight to Avoid Prosecution-Property Crime or Narcotics	20	8.0%	.3%	21	8.7%	.3%	21	8.5%	.3%	21	8.6%	.3%	21	8.3%	.2%
Unlawful Flight to Avoid Prosecution-Parental Kidnaping				14	5.8%	.2%	16	6.5%	.2%	16	6.5%	.2%	14	5.5%	.2%
Unlawful Flight to Avoid Prosecution-All Others	17	6.8%	.2%	13	5.4%	.1%	11	4.5%	.1%	10	4.1%	.1%	7	2.8%	.1%
Drug Enforcement Administration and Other Federal Agency Fugitives	26	10.4%	.4%	22	9.1%	.3%	21	8.5%	.3%	25	10.2%	.1%	25	9.9%	.3%
Domestic Police Cooperation	10	4.0%	.2%	12	5.0%	.1%	14	5.7%	.2%	12	4.9%	.1%	13	5.3%	.1%
All Others	3	1.2%	...	3	1.2%	...	11	4.5%	.1%	11	4.5%	.1%	14	5.5%	.2%
Total	250	100.0%	3.6%	241	100.0%	2.9%	246	100.0%	3.1%	245	100.0%	2.8%	252	100.0%	3.0%

Exhibit No. 28

Unlawful Flight and Other
Fugitives Arrested by the FBI
Fiscal Years 1983 - 1987

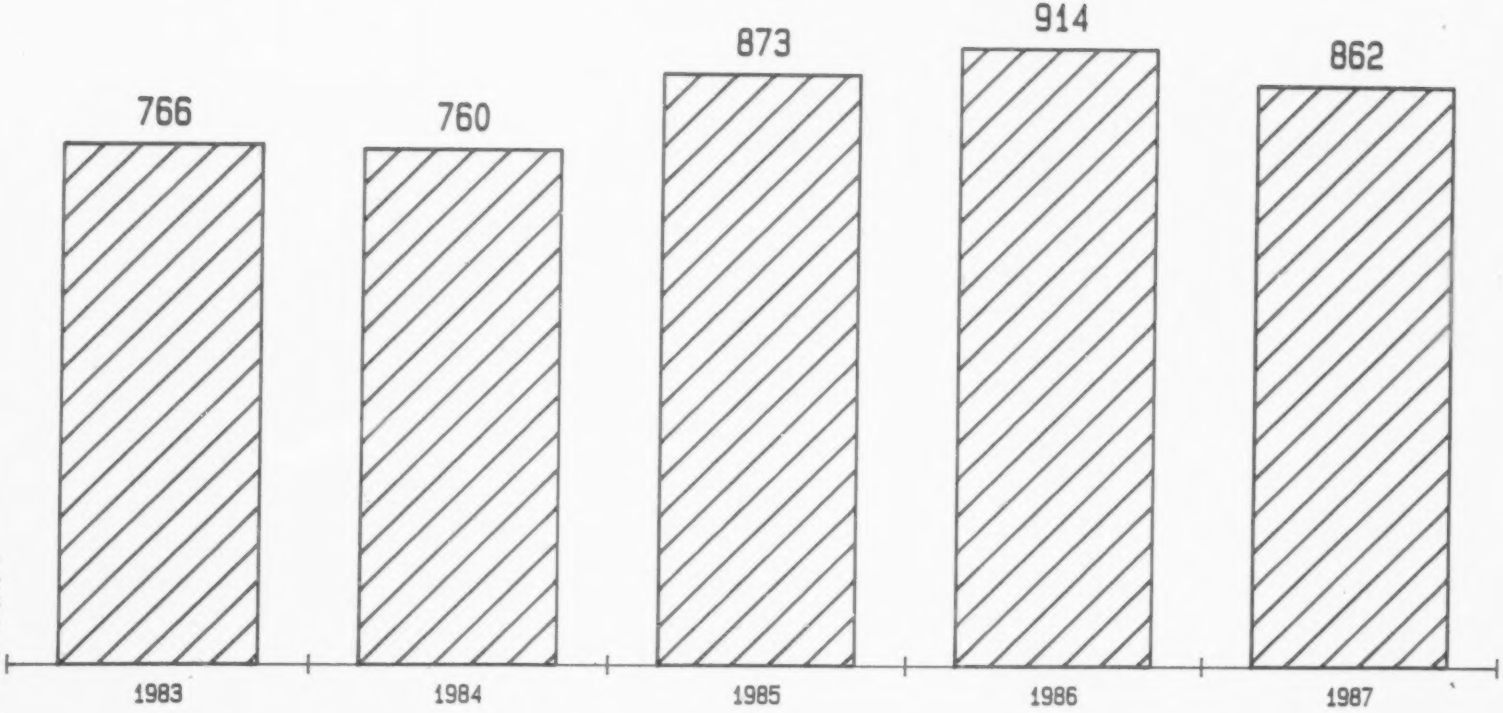


Exhibit No. 29

GENERAL GOVERNMENT CRIMES INVESTIGATIONS

The United States Government, as property owner, employer, and supplier of goods and services to its constituent agencies, departments, and the general public, is not immune from the reach of criminals. The FBI, through its General Government Crimes Program, works to reduce the personal and tax dollar impact of such criminal activity.

General Government Crimes Program investigations are directed toward the identification, investigation, and prosecution of criminals and criminal groups engaged in serious personal and major property crimes committed against or on property where the United States Government has jurisdiction, which includes approximately 430 major Department of Defense installations, numerous civilian agency buildings and sites, national parks and recreation areas, approximately 256 Indian reservations, and 47 Federal penitentiaries and correctional facilities. Also investigated under this program are cases referred to the Department of Justice by the Selective Service System (SSS) in which an individual is suspected of failing to register with SSS as required by law, individuals impersonating Federal officials, and false identification matters.

During Fiscal Year 1987, there were 909 convictions and 58 pre-trial diversions in the General Government Crimes Program. FBI investigations also resulted in the recovery of more than $8.6 million in stolen or illegally possessed property and the prevention of $1.2 million in potential economic losses.

Following are exhibits showing Agent time spent by major category of General Government Crimes investigations and convictions obtained in Federal court.

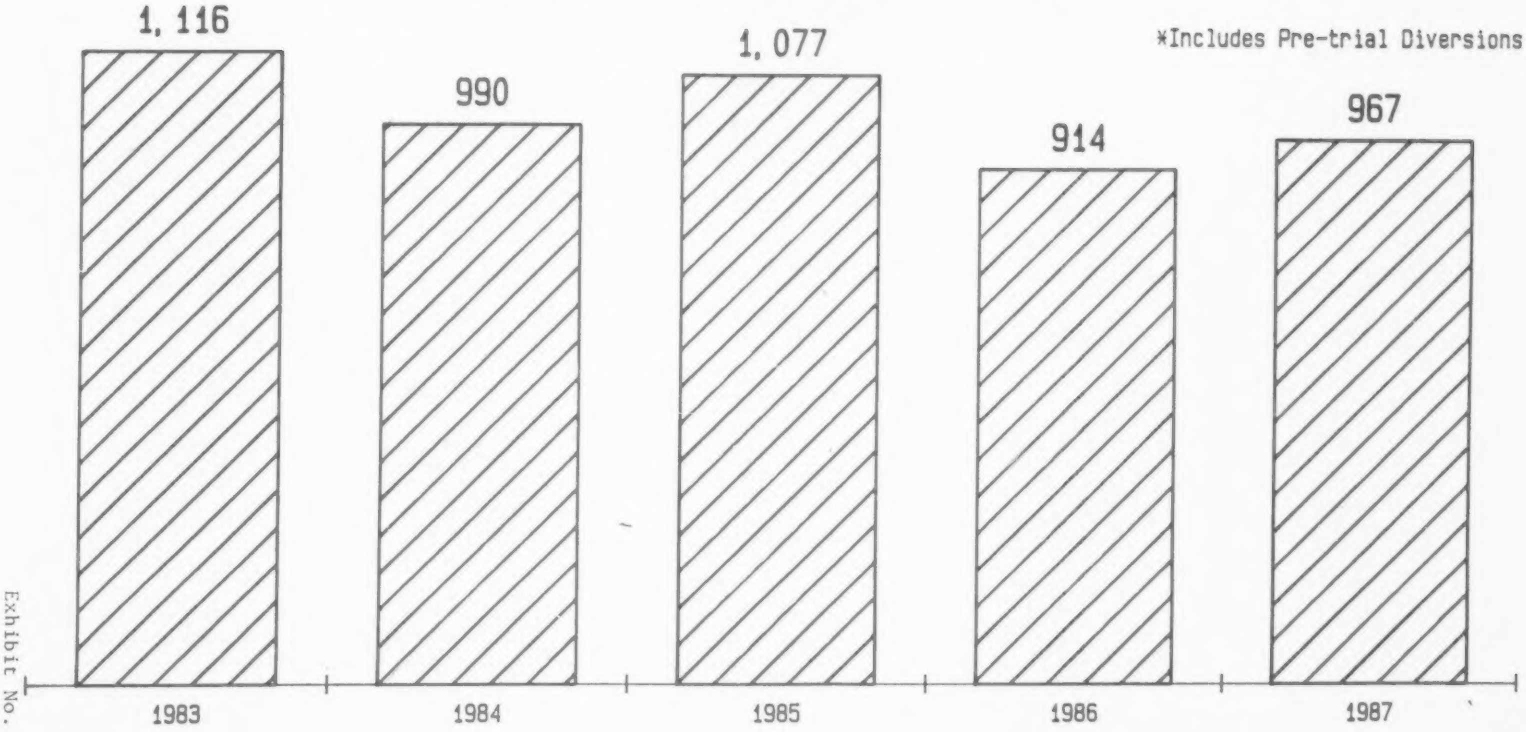
Exhibit No. 30

AGENT TIME SPENT BY MAJOR CATEGORY OF GENERAL GOVERNMENT CRIMES INVESTIGATIONS
FISCAL YEARS 1983 - 1987
(Includes Field Supervisors)

	1983			1984			1985			1986			1987		
MAJOR CATEGORY	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL
Thefts of Government Property	52	30.7%	.8%	55	34.4%	.7%	50	30.7%	.6%	41	28.3%	.5%	38	27.4%	.5%
Crimes on Government Reservatiors	50	29.6%	.7%	45	28.1%	.5%	47	28.8%	.6%	39	26.9%	.5%	38	27.4%	.5%
Selective Service Act				3	1.9%	...	6	3.7%	.1%	6	4.1%	.1%	1	.7%	...
Irregularites in Federal Penal Institutions	6	3.6%	.1%	9	5.7%	.1%	15	9.2%	.2%	10	6.9%	.1%	10	7.2%	.1%
Impersonation				10	6.2%	.1%	11	6.8%	.1%	8	5.5%	.1%	7	5.5%	.1%
Crimes on Indian Reservations	30	17.8%	.4%	33	20.6%	.4%	32	19.6%	.4%	38	26.2%	.5%	41	30.0%	.5%
All Others	31	18.3%	.4%	5	3.1%	.1%	2	1.2%	...	3	2.1%	...	2	1.8%	...
Total	169	100.0%	2.4%	160	100.0%	1.9%	163	100.0%	2.0%	145	100.0%	1.8%	137	100.0%	1.7%

Exhibit No. 31

General Government Crimes Convictions in Federal Court* Fiscal Years 1983 - 1987



*Includes Pre-trial Diversions

Exhibit No. 32

Exhibit No. 33

GENERAL PROPERTY CRIMES INVESTIGATIONS

Crime remains a pervasive problem in American society, one that affects millions of citizens in every community across the Nation. More than 11 million property crimes, one every three seconds, were reported to state and local law enforcement agencies during 1986 according to Uniform Crime Report data. National Crime survey data released by the Bureau of Justice Statistics (BJS), Department of Justice, showed that 25 percent of American households, approximately 22 million, were touched by a crime of violence or theft in 1985. Also, according to Uniform Crime Report data, the number of property crimes in 1986 was up six percent from the 1985 volume; motor vehicle theft showed an increase of 11 percent. For the first six months of 1987, property crimes showed a two percent increase over the same period in 1986.

The FBI's General Property Crimes Program (GPCP) focuses on thefts from interstate shipments, the interstate transportation of stolen goods and motor vehicles, individuals and groups engaged in such criminal activities, and fences buying and selling stolen property. Program investigations often develop links between property crime occurrences, fences, organized crime, and narcotics trafficking. Other program investigations include Arson matters, Crime on the High Seas, and Destruction of Aircraft or Motor Vehicles. Traditional investigative approaches to property crime occurrences are complemented with the use of undercover operations (UCOs) directed against specific crime problems. UCOs enable FBI Agents to identify and penetrate theft rings and fencing operations, to obtain intelligence information about criminal activities, and to gather evidence against high-echelon criminals who have previously been able to insulate themselves against direct lines of complicity in illegal activities.

Property crime UCOs have successfully penetrated organized automobile theft and "chop shop" operations throughout the country. An UCO aimed at the identification and prosecution of high-level commercial auto thieves, specializing in retagging stolen vehicles in the State of Ohio was recently concluded. Subjects of this UCO were part of six major vehicle theft rings operating in the metropolitan Cleveland area. Indictments were returned on 47 subjects by a Federal grand jury (FGJ) in Cleveland, Ohio, in September, 1987. Ninety-eight stolen automobiles valued at approximately $800,000 have been recovered with additional recoveries anticipated.

In a recently terminated Midwestern UCO, undercover Agents (UCAs) posed as individuals capable of disposing of insurance fraud vehicles received through criminal middlemen. These middlemen were introduced to the UCAs through the use of informants. After meeting with the UCAs and providing them with the vehicle to be disposed of the middlemen would then inform the owner that the vehicle could be reported stolen and a fraudulent insurance claim made. As a result of this UCO, 50 FGJ indictments and 69 Federal criminal complaints were issued charging 171 individuals with violations of mail fraud and conspiracy statutes. Recovered in the operation were 163 vehicles valued at approximately $1.1 million dollars. To date, 135 individuals have been convicted and various Federal and state charges on the remaining subjects are pending.

A Chicago UCO designed to address individuals involved in commercial motor vehicle thefts, salvage yard operations, and police corruption has thus far resulted with 12 subjects having been charged with mail fraud and conspiracy violations and an additional 12 subjects being charged with local felony violations of theft, possession of stolen motor vehicles, burglary, sale of stolen motor vehicle parts and fraud. The initial wave of Federal charges focused principally upon owners who defrauded their insurance companies. Additional Federal indictments will be directed at auto thieves, insurance "give-up" middlemen and police officers. Over $1 million in recoveries have been realized in this UCO, the bulk of which were recovered automobiles and auto parts.

A UCO directed at thefts of motor vehicles, commercial trucks, coal-mine machinery, and heavy equipment in West Virginia, and adjoining states is an ongoing joint investigative effort with local law enforcement agencies. Thus far, this UCO has been credited with the recovery of $133,000 worth of stolen motor vehicles and coal trucks and prosecutable cases have been made on 14 subjects, 12 on Federal charges and two on state charges.

A UCO begun in November, 1979, continues to penetrate and fully identify several groups of organized criminals who are responsible for the theft and subsequent transportation into Mexico of stolen motor vehicles and heavy equipment as well as narcotics violations. Significant statistical accomplishments have been recorded as a result of this project. To date, 364 subjects have been convicted in Federal, state and local courts. In excess of $25,000,000 in stolen property has been recovered and over 50 pounds of cocaine, 150 pounds of amphetamines and a large amount of marijuana have been seized.

During Fiscal Year (FY) 1987, the GPCP's efforts resulted in the convictions of 1,200 persons, 804 arrests and 94 subjects located. Another 471 persons were convicted in state or local court as a result of FBI investigative efforts. In this period, stolen property, in the amount of $96,917,563 was recovered; $2,658,869 in fines were assessed; and $159,272,110 in potential economic loss was prevented.

Following are exhibits showing agent time spent by major category of General Property Crimes investigations and convictions obtained in Federal court.

AGENT TIME SPENT BY MAJOR CATEGORY OF GENERAL PROPERTY CRIMES INVESTIGATIONS
FISCAL YEARS 1983 - 1987
(Includes Field Supervisors)

	1983			1984			1985			1986			1987		
MAJOR CATEGORY	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL	AGENT WKYRS	PERCENT OF PROGRAM	PERCENT OF TOTAL
Thefts from Interstate Shipments	106	16.0%	1.5%	103	17.0%	1.2%	91	16.5%	1.1%	88	17.0%	1.1%	81	16.1%	1.0%
Interstate Transportation of Stolen Motor Vehicles and Aircraft	130	19.6%	1.8%	133	22.2%	1.6%	130	23.5%	1.6%	124	24.0%	1.5%	123	24.5%	1.5%
Interstate Transportation of Stolen Property	280	42.3%	4.0%	253	42.2%	3.1%	236	42.6%	2.9%	207	40.0%	2.6%	181	36.2%	2.2%
Racketeer Influenced and Corrupt Organizations	56	8.4%	.8%	34	5.6%	.4%	22	4.0%	.3%	21	4.1%	.3%	29	5.9%	.3%
All Others	91	13.7%	1.3%	77	13.0%	.9%	74	13.4%	.9%	77	14.9%	.9%	87	17.3%	1.0%
Total	663	100.0%	9.4%	600	100.0%	7.2%	553	100.0%	6.8%	517	100.0%	6.4%	501	100.0%	6.0%

Exhibit No. 34

General Property Crimes Convictions in Federal Court* Fiscal Years 1983 – 1987

*Includes Pre-trial Diversions

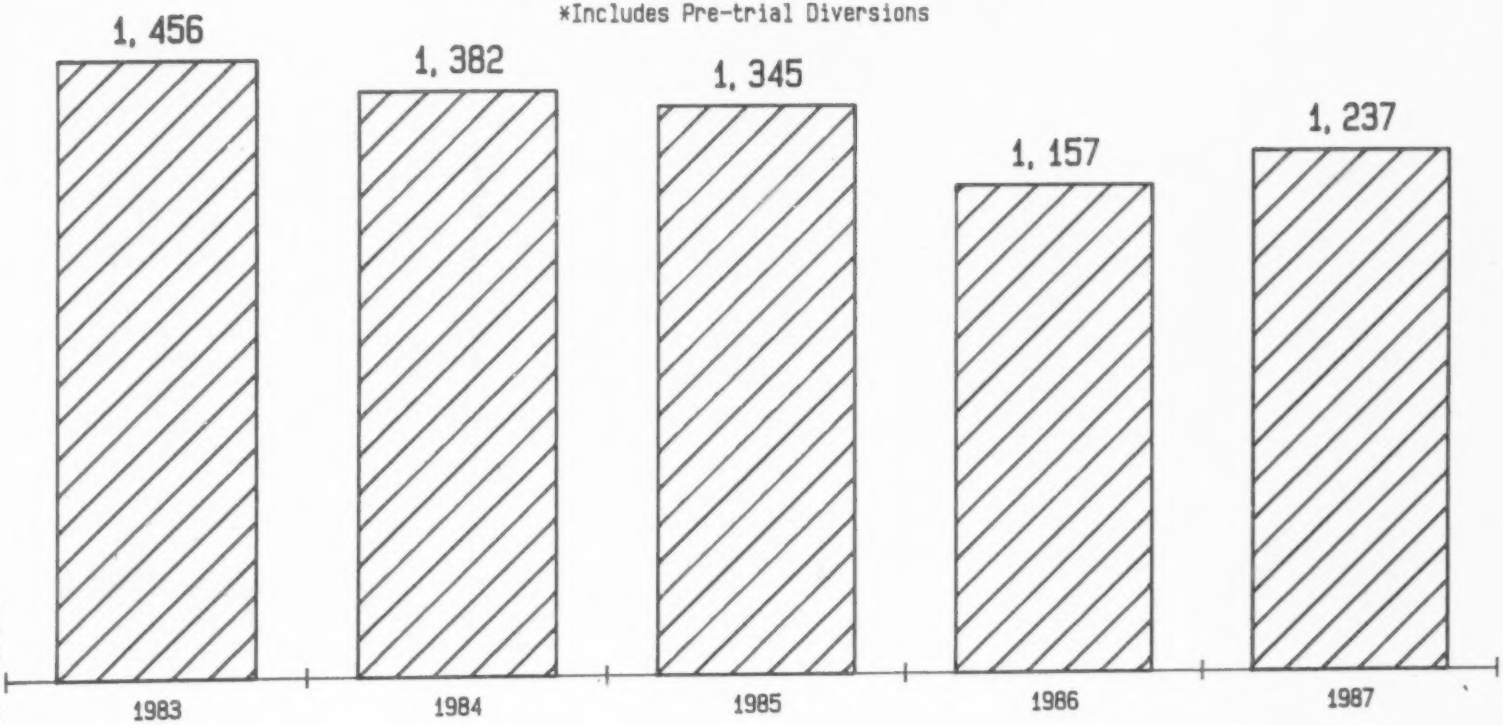


Exhibit No. 35

CIVIL RIGHTS INVESTIGATIONS

The Civil Rights Program addresses investigations rising from the actual or attempted abridgment of rights provided to citizens and inhabitants of the United States under the Constitution and laws of the country. The primary objective of this program is to enhance and protect those rights through expeditious investigation of matters within FBI jurisdiction. Both civil and criminal matters are investigated in close coordination with the the Civil Rights Division of the United States Department of Justice.

A total of 47 Federal convictions were achieved in civil rights matters in 1987. Two members of the Aryan Nation were found guilty and sentenced to terms of 150 years in jail in connection with the murder of Alan Berg, a Jewish radio talk show host who frequently aired his opposition to the Aryan Nation. In September 1987, two former agents of the United States Customs Service were convicted and sentenced to terms of 120 years for the 1982 murder of a money courier who was transporting $700,000 into the San Juan, Puerto Rico, International Airport. Active investigations were conducted in a series of racial violence situations at Howard Beach, New York; The Citadel, South Carolina, and a civil rights march in Forsyth County, Georgia. Aggressive investigation of the Forsyth County incident, which included interviews of members of white-hate groups, is credited by some authorities as contributing to the relatively peaceful march the following weekend in which an estimated 100,000 people participated.

In addition to conducting investigations, resources will also be used in 1987 to provide specialized instructional programs to FBI field supervisors and investigators. The purpose of these seminars is to enhance the managerial and investigative skills of Special Agents assigned to civil rights investigations by keeping them abreast of complex civil rights issues, thus enabling a more timely, accurate, and effective response to civil rights matters referred to the FBI. Similar programs will also be conducted for local and state law enforcement officers attending the FBI National Academy program at Quantico, Virginia. These programs will increase participants' knowledge concerning Constitutional rights and the special duties and obligations which the law imposes on law enforcement officers in upholding and protecting these rights.

Following are exhibits showing agent time spent by major activity of Civil Rights investigations and convictions obtained in Federal court.

Exhibit No. 36

Civil Rights Program
Convictions in Federal Court*
Fiscal Years 1983 - 1987

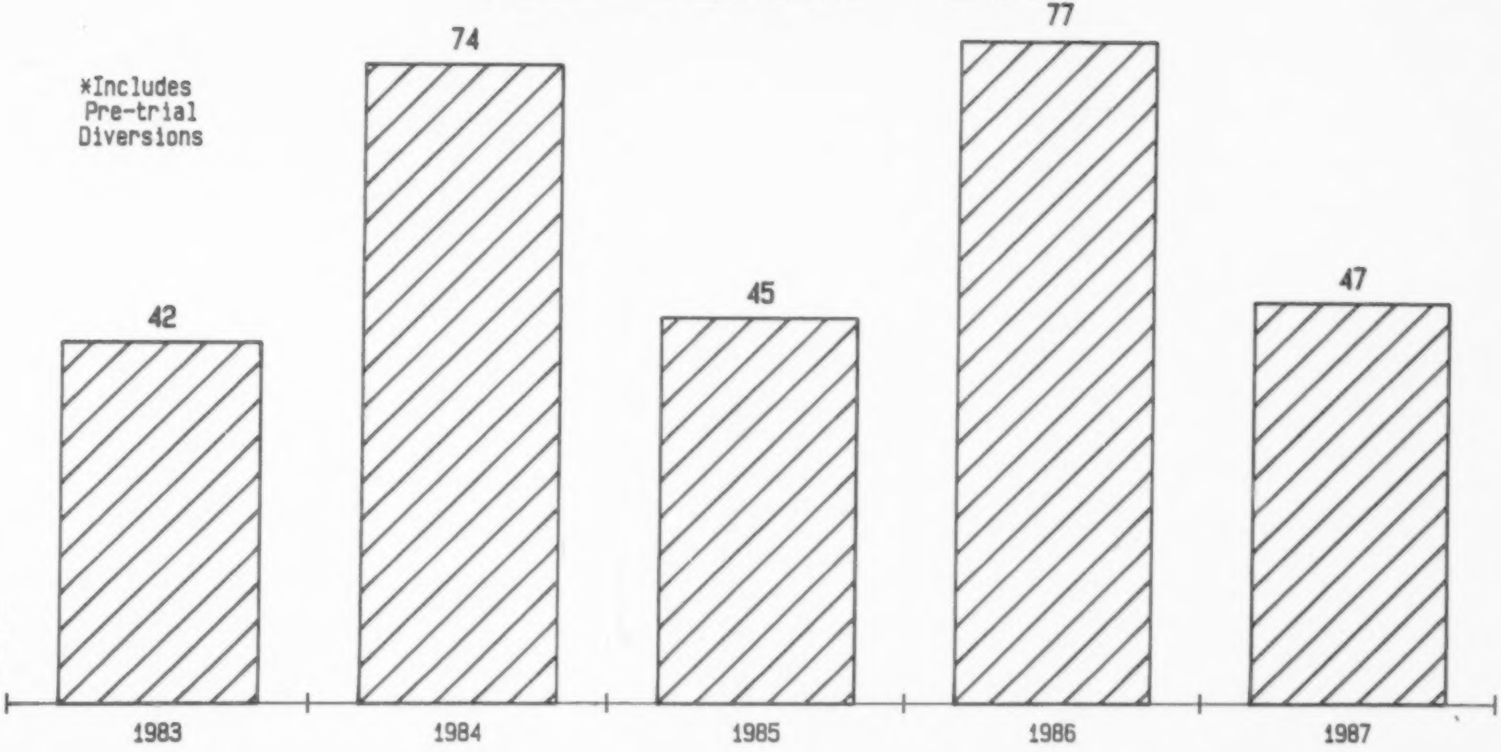


Exhibit No. 37

CRIMINAL INFORMANT PROGRAM

The FBI considers the criminal informant to be an important and invaluable investigative tool in fulfilling its investigative responsibilities. Due to the myriad of criminal matters investigated by the FBI and the increasing sophistication of some individuals in the criminal element, it has become imperative, over the years, for the FBI to rely upon the information provided by informants to resolve many of the complex cases under investigation. The FBI has enjoyed success in the resolution of numerous complicated cases due, in no small part, to the use of criminal informants. Employment of some investigative techniques such as electronic surveillances is dependent upon information provided by the criminal informant.

Virtually every major case investigated by the FBI involves the use of an informant in some capacity and the information provided by them results in substantial numbers of arrests and convictions each year. Informants provide information of intelligence value leading not only to the solution of crimes, but also to the recovery of stolen property, the locating of wanted persons, and the detection of some crimes in the planning stages.

FBI informants often furnish information regarding criminal acts which are in violation of state laws or of Federal laws over which the FBI has no jurisdiction. This information is disseminated to the appropriate law enforcement agency to assist in its investigations.

Informants are not used by the FBI to circumvent legal or ethical restrictions. Informants are given specific instructions not to participate in acts of violence, use unlawful techniques to obtain information, or initiate a plan to commit criminal acts. Informants are sometimes authorized to participate in criminal activities with persons under investigation if it is determined that such activities are necessary to obtain information needed for purposes of Federal prosecution. If this participation in otherwise criminal acts involves significant risk of violence, corrupt actions by high public officials, or severe economic loss to a victim, the concurrence of an appropriate United States Attorney is obtained prior to the authorization being given.

Informants are paid for services and expenses on a cash-on-delivery basis for information provided in authorized investigative activities. The amount paid to an informant is determined by the FBI based on the value of the information provided by the informant.

Exhibit No. 38

CRIMINAL UNDERCOVER OPERATIONS

The undercover technique has opened avenues of investigative pursuit not available in the context of the traditional investigative process. The presence of an undercover special agent provides firsthand special agent testimony relating to the nature and the scope of the criminal activities, the extent of involvement of the various offenders, and the location of items of evidence. Undercover agents are often able to obtain evidence relating to the knowledge, intent, and predisposition of individuals involved in criminal activity which, combined with the use of audio and/or video tapes, produces the strongest and most convincing evidence in a court of law. Undercover agents have the ability, in certain situations, to penetrate the highest levels of criminal activity, which heretofore have been unreachable.

The undercover technique also allows for more effective and safer use of sources and informants, in that the information obtained from the undercover operative may preclude the necessity for sources/informants to testify in court. in addition, undercover operatives often obtain evidence of past and planned crimes. In the instance of a planned crime, the undercover technique affords the FBI the opportunity to take a proactive approach, rather than investigating solely after the fact.

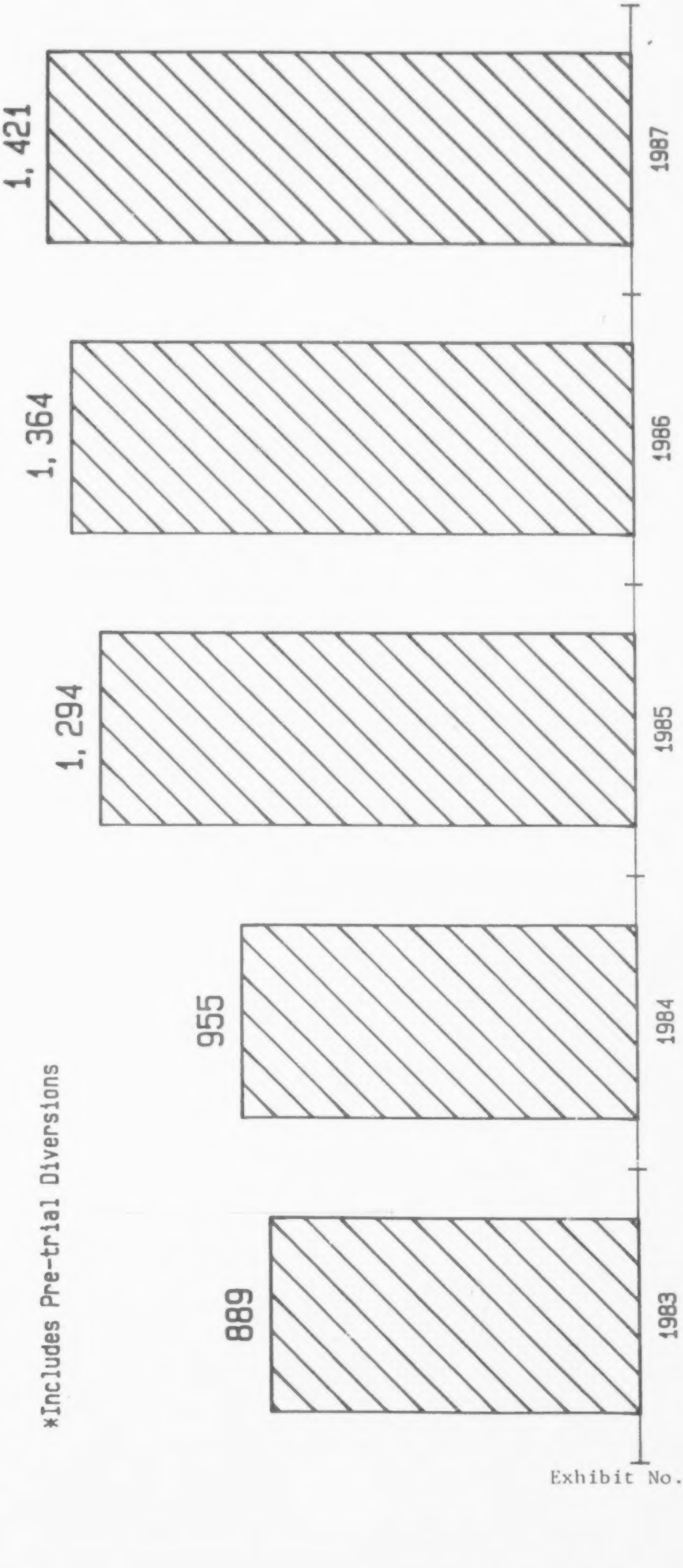
Firsthand testimony from undercover agents increases the chance of conviction and thus reduces the necessity to offer immunity or reduced charges to defendants and of using convicted felons or former confederates in order to prosecute higher echelon subjects.

All FBI criminal undercover operations are conducted in accordance with the Attorney General's guidelines for undercover operations.

Following is an exhibit showing the number of convictions obtained in Federal court as a result of undercover operations.

Exhibit No. 39

Criminal Undercover Operations Convictions in Federal Court* Fiscal Years 1983 – 1987



*Includes Pre-trial Diversions

Exhibit No. 40

APPLICANT INVESTIGATIONS FOR OTHER AGENCIES

The FBI assists other Federal entities, including the White House, Department of Justice, Department of Energy, and others, by conducting background investigations concerning persons being considered for Presidential appointments and other important and sensitive positions in the United States Government. During the 1987, over 6,000 requests for background investigations were received--an increase of approximately 50 percent from the previous year. The FBI attempts to maintain strict standards of timeliness in its investigations to insure these cases are promptly completed; however, the volume of requests in 1987 caused delays in lower priority matters. The FBI will not sacrifice thoroughness to meet timeliness standards and continues to review its procedures to insure that investigations meet the needs of the requesting agencies.

Following is an exhibit showing background investigations conducted by the FBI for other Federal agencies.

Exhibit No. 41

Background Investigations Requested
by Other Federal Agencies
Fiscal Years 1983 - 1987

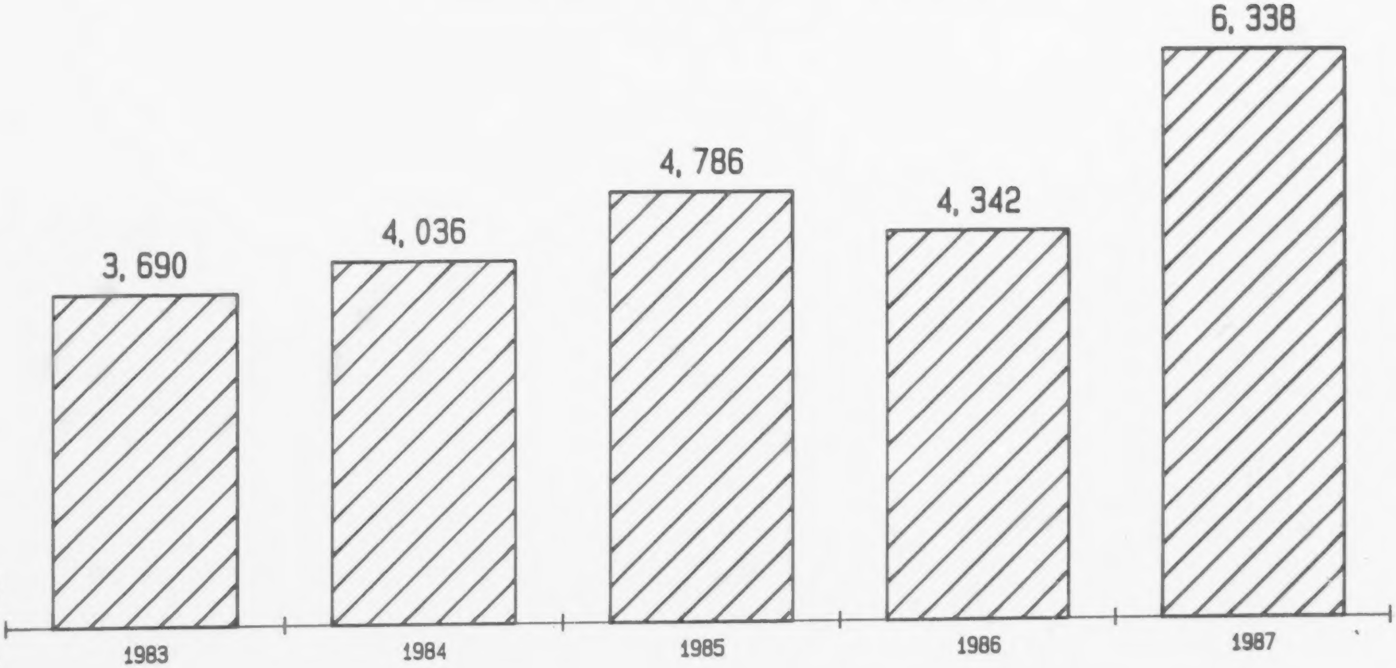


Exhibit No. 42

INVESTIGATIVE SUPPORT AND STATE AND LOCAL ASSISTANCE

SUPPORT FOR FBI FIELD INVESTIGATIVE PROGRAMS AND ACTIVITIES IS PROVIDED FOR UNDER THE INVESTIGATIVE SUPPORT BUDGET ACTIVITY. INVESTIGATIVE SUPPORT INCLUDES TRAINING, FORENSIC LABORATORY EXAMINATIONS AND RESEARCH, MANAGEMENT OF INVESTIGATIVE AND ADMINISTRATIVE RECORDS, AUTOMATED DATA PROCESSING AND TELECOMMUNICATIONS SYSTEMS AND MAINTENANCE, AND FIELD TECHNICAL SUPPORT AND EQUIPMENT ACQUISITION. IN 1989, THESE ACTIVITIES WILL REQUIRE 2,644 POSITIONS AND $319,606,000. PROGRAM INCREASES ARE BEING REQUESTED TO SUPPORT THE CONTINUED DEVELOPMENT OF EXPERT SYSTEMS, THE ACQUISITION OF DATA COMMUNICATIONS CIRCUITS, THE LEASE OF RADIO ANTENNA TOWER SITES, THE PURCHASE OF ELECTRONIC SURVEILLANCE EQUIPMENT, AND THE FIELD ELECTRONICS TECHNICIAN PROGRAM.

STATE AND LOCAL LAW ENFORCEMENT ARE SUPPORTED THROUGH TRAINING PROGRAMS, LABORATORY AND FINGERPRINT IDENTIFICATION EXAMINATIONS, AND CRIMINAL JUSTICE DATA AND STATISTICS SERVICES, INCLUDING THE NATIONAL CRIME INFORMATION CENTER AND UNIFORM CRIME REPORTING PROGRAMS. THESE ACTIVITIES WILL REQUIRE 3,049 POSITIONS AND $132,273,000 IN 1989. A PROGRAM INCREASE IS REQUESTED TO SUPPORT IMPLEMENTATION OF A PRESIDENTIAL PRODUCTIVITY IMPROVEMENT PROGRAM INITIATIVE WITHIN THE AUTOMATED IDENTIFICATION SYSTEM.

THE FOLLOWING INFORMATION AND EXHIBITS DESCRIBE ACTIVITIES IN THE AREAS OF INVESTIGATIVE SUPPORT AND STATE AND LOCAL ASSISTANCE.

Exhibit No. 43

Exhibit No. 44

TRAINING PROGRAMS

Training provided by the FBI to its employees can be generally categorized into two areas: (1) Basic - New Agents' training at the FBI Academy, and (2) Specialized - In-service training for Special Agents and support personnel at the Academy and at the field office level.

The New Agents' Training Program provides a high level of instruction to insure that basic knowledge and skills are developed to enable new Special Agents to discharge their complex responsibilities when they are initially assigned to investigative operations in the field. The First Office Agent also receives professional guidance, assessment, and training during the probationary period (one year) in the field.

Specialized training is accomplished through formal in-service programs conducted at the FBI Academy for Special Agents and support personnel. Direct field support programs, using FBI Academy instructors and/or police instructors assigned to the various field offices, afford additional in-service training at the field level.

In-service training is designed to develop the full potential of all FBI personnel and to specifically enable them to:

- conduct complex investigations in the highest national priority areas: organized crime, white-collar crime, foreign counterintelligence, narcotics, and terrorism, as well as carry out all other general criminal investigations, and

- apply law enforcement skills and knowledge such as law, behavioral science, firearms, defensive tactics, and raid and arrest techniques.

Employees participate in sophisticated management, assessment, and education programs to improve the abilities of support managers as well as the mid and upper-level FBI executives to more effectively carry out their complicated responsibilities, including personnel and program management, affirmative action, media relations, and budgeting.

In-service training provides job enrichment and career development opportunities for personnel through educational programs at the FBI Academy and elsewhere.

Training efforts at the Academy and in the field support crisis management training for FBI personnel who will be expected to respond in the event of terrorism, aircraft hijackings, hostage incidents, or other life-threatening situations.

FBI training efforts include faculty improvement and research and development programs, which are essential to provide effective, direct field support and training program improvement and assessment.

During Fiscal Year 1987, 4,150 FBI employees attended various training sessions conducted at the FBI Academy. A total of 802 New Agents entered on duty during this period. Specialized in-service training included courses in white-collar crime, organized crime, foreign counterintelligence, counter-terrorism, narcotics, legal matters, crisis management, forensic science matters, behavioral science topics, undercover operations, management and executive development, technical and electronic training, and instructor and special seminars.

- Police Training Operations

The FBI provides courses of instruction for state and local criminal justice practitioners, both at the FBI Academy and throughout the United States at state, regional, and local training facilities in order to improve their administrative, investigative, management, and technical capabilities. This instruction is offered consistent with instructional expertise, availability of personnel, and budgetary limitations.

The principal course offered at the FBI Academy is the "FBI National Academy Program." This is an eleven-week, multi-discipline course for seasoned law enforcement managers nominated by their agency heads because of their potential for continuing advancement. Sessions are conducted four times a year for a total of 800 officers annually. The academic courses in this program are accredited by the University of Virginia. By the end of Fiscal Year 1987, 20,885 officers had completed this program of which 833 were foreign students, with one out of eight of the graduates who are active in law enforcement being the head of their agency.

In 1976, the FBI instituted the National Executive Institute. This program, 15 days in length, is designed to meet the needs of the chief executive officers of our Nation's largest law enforcement organizations. To date, more than 300 executive graduates have participated in this program. In 1981, the Law Enforcement Executive Development Seminar, which is designed for police chiefs from mid-sized agencies, was implemented. By the end of 1987, 480 police executives had graduated from this course. In 1984, the FBI initiated the National Law Institute, a specialized training program for state and local police legal advisors. To date, approximately 250 have completed this one-week course which is designed to provide current instruction and training in areas of the law which impact law enforcement.

Specialized schools and courses dealing with a broad range of criminal justice related topics, such as Hostage Negotiation, Computer-Related Crimes, Death Investigations, Interpersonal Violence, Criminal Psychology, Law Enforcement Laboratory Matters, and similar subjects are offered at the Academy. They range in length from three days to four weeks. During Fiscal Year 1987, specialized schools and symposia were offered for 2,350 criminal justice personnel.

In addition to course offerings, FBI Academy faculty conducted research and provided assistance to federal, state, and local law enforcement on a myriad of topics and investigative techniques, including psycholinguistics, forensic hypnosis, psychological profiling of unknown subjects of multiple homicide and sex crime cases, hostage negotiations, crisis management, and on major case strategy consultations.

- National Center for the Analysis of Violent Crime

The National Center for the Analysis of Violent Crime (NCAVC) has been operational at the FBI Academy since June 1985. The NCAVC is a law enforcement-oriented behavioral science and computerized resources center which consolidates research, training, and investigative support functions to provide assistance to law enforcement agencies confronted with unusual, bizarre, and/or particularly vicious or repetitive violent crime.

The NCAVC addresses the issue of violent crime through its four major programs: Research and Development, Training, Criminal Investigative Analysis, and the Violent Criminal Apprehension Program (VICAP). During 1987, the NCAVC received a total of 1,683 cases for assistance. Of that total, 1,159 were VICAP Crime Reports submitted to the VICAP national data center which collects, collates, and analyzes the aspects of violent crimes so that through computer analysis and data processing, violent crimes can be compared, identified, and charted. There were 360 requests for profiling assistance from local law enforcement in which offenders were responsible for 287 homicides, 200 rapes, 102 sexual assaults, and 310 arsons, and an additional 164 cases were received in which the FBI has jurisdiction. Services rendered for 1987 included 163 criminal personality profiles, 77 personality assessments, 179 investigative techniques, 121 interview strategies, 31 prosecutive/trial strategies, nine expert witness court appearances, one crime scene assessment, seven crime analyses, and 448 case consultations. These services were rendered in investigative cases where 204 subjects/suspects were identified who were responsible for crimes against 1,717 victims.

Four veteran investigators representing major law enforcement agencies in the United States completed a one-year fellowship to study the application of advanced behavioral science techniques to violent crime. In addition, a Special Agent from the Bureau of Alcohol, Tobacco and Firearms completed this fellowship, bringing the total number of graduates of this unique program to 16.

- Other State, Local, and Foreign Police Training

During 1987, FBI instructors provided 49,844 hours of instruction in 5,198 law enforcement schools attended by 166,668 criminal justice practitioners in the field.

Instructors from FBI Headquarters supported this field training effort in a variety of subjects such as Forensic Science Applied Criminal Psychology, Identification Matters, Management, Uniform Crime Reporting, Arson, Death Investigation, and Instructor Development. The Training, Laboratory, Identification, Criminal Investigative, and Technical Services Divisions offered a total of 502 specialized schools to local, county, and state criminal justice personnel, reaching more than 42,635 students.

As an adjunct to police training matters, the FBI has traditionally offered training in ongoing courses to a few select foreign police officers. Since 1938, the FBI has trained, through the National Academy Program, 833 officers from friendly foreign nations, and there are 197 graduates from United States territories and possessions. To continue the professional development of National Academy graduates and to foster international cooperation, FBI National Academy Associates Chapters have been formed in Europe, Southeast Asia, and Latin America. Commencing in Fiscal Year 1988, a joint United States/Mexican training program will be implemented for the purpose of training Mexican police officers in basic criminal investigative matters.

Exhibit No. 45

LABORATORY SERVICES

The FBI Laboratory is one of the largest and most comprehensive crime laboratories in the world. Since its inception in 1932, it has provided leadership and service in the scientific solution and prosecution of crimes in the United States.

FBI Laboratory services are funded and administered under two programs: Forensic Services - Federal and Forensic Services - Non-Federal. Although a distinction is made in administering funds and capturing statistics, all Laboratory examiners and technicians work in both programs using the same laboratory facilities and instrumentation.

Under the Forensic Services - Federal program, FBI Laboratory examiners participate in ongoing field investigations by conducting crime-scene searches; performing special surveillance photography; executing search warrants; and providing other on-scene scientific and/or technical services as necessary. Forensic examinations of evidence are performed in the Laboratory in support of FBI, DEA, and other Federal investigations. Expert court testimony and demonstrative evidence are provided as necessary to enhance prosecutive efforts. Funding in this program also supports an active and successful forensic science research program and forensic science training for Federal investigative and crime laboratory personnel at the Forensic Science Research and Training Center; specialized photographic and investigative equipment in support of ongoing investigations; oversight of such programs as the Polygraph Program, the Foreign Language Services Program, and the Photographic Equipment Program; and the training, publication, research, and operational support provided by the Bomb Data Center.

Under the Forensic Services - Non-Federal program forensic science examinations of evidence submitted in connection with criminal investigations and prosecutions with necessary expert court testimony may be performed, free of charge, for all duly constituted law enforcement agencies in the United States. All requests for examinations involving state and local matters are carefully screened. It is the policy of the FBI Laboratory to return requests from state and local laboratories when it can be determined that the contributing laboratory has the capability to perform the examination. State and local law enforcement agencies are encouraged to use jurisdictional laboratories when available. However, some law enforcement agencies still do not have access to jurisdictional laboratories and even when available such laboratories often do not have the sophisticated instrumentation and/or expertise to perform the necessary examination(s). Additionally, state and local crime laboratory and law enforcement personnel receive training in courses which have been carefully selected and developed after consultations throughout the law enforcement and crime laboratory communities. Many of the courses offered are not available anywhere else in the United States.

The success of efforts to increase the capabilities of state and local law enforcement agencies through providing highly specialized training in forensic disciplines to their crime laboratory examiners, is dependent upon adequate funding for this program. Much of this training is not available anywhere else in the United States and without it jurisdictional laboratories would find it difficult to improve and expand their capabilities.

• FBI Laboratory Accomplishments

During 1987, the FBI Laboratory received 19,553 requests for examinations containing 162,853 specimens of evidence. Nearly 1,088,000 examinations were performed on these specimens. Of the examinations performed, approximately 742,000 were in support of FBI and other Federal investigations. The remaining approximately 346,000 were performed at the request of state, county, and municipal law enforcement agencies. During the past year, Laboratory examiners responded to 915 commitments for testimony in courts of various jurisdictions throughout the United States. These commitments required the expenditure of 1,936 workdays.

Other notable accomplishments include the preparation of 11,458 investigative and prosecutive aids and the processing of 3,066,425 photographic prints.

• Current FBI Laboratory Research and Training Efforts

The Forensic Science Research and Training Center (FSRTC), located at the FBI Academy, was formally opened and dedicated June 16, 1981. This unique facility houses both research and training laboratories and classrooms. The FSRTC is meeting the needs of the forensic science community by providing the necessary environment for practical "hands-on" training and applied research.

The training programs offered at the FSRTC are designed to maximize the use of physical evidence in the solution and prosecution of crimes; to enhance the professionalism of state and local crime laboratory personnel; and to meet the needs of Federal crime laboratory personnel. During 1987 this training was provided to 813 National Academy Students; 730 new FBI Agents; 410 new DEA Agents; 685 students in specialized forensic science courses primarily for state and local crime laboratory and law enforcement personnel; and 323 FBI in-service personnel.

During the past fiscal year the Laboratory hosted three major symposia. These symposia, attended by scientists from throughout the United States as well as eight foreign countries, included "The 15th Annual Symposium on Crime Laboratory Development," "The International Symposium on Terrorist Devices and Methods," and "An International Forensic Symposium on Latent Prints."

To stay abreast of advancing technology and to better meet the needs of the law enforcement community, the FBI Laboratory engages in a research program which encompasses the entire range of forensic disciplines. Specific targets are selected through close liaison with FBI investigators as well as other Federal, state, and local law enforcement personnel. Results of research efforts are shared through publication of the "Crime Laboratory Digest," which is circulated throughout the law enforcement community and through articles published in various scientific journals. In 1987 the areas of concentration included molecular biology, immunology, chemistry, physics and polygraph. The most noteworthy research efforts were in the area of adopting DNA technology to forensic science.

Following are exhibits showing annual laboratory examinations for Federal, state, and local law enforcement agencies for the period 1984 through 1989 and the laboratory assistance to non-Federal law enforcement agencies in 1987.

FBI Laboratory Examinations for Federal, State, and Local Agencies

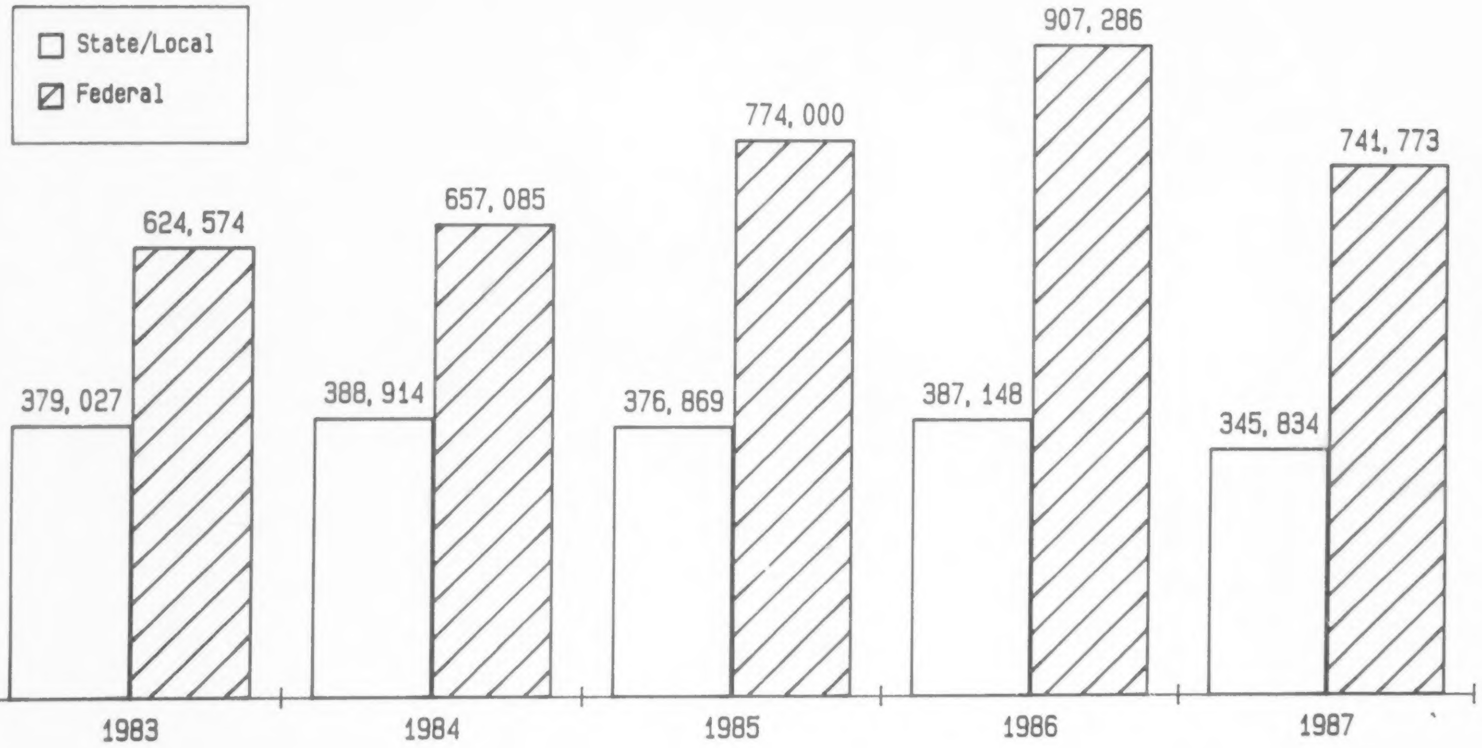


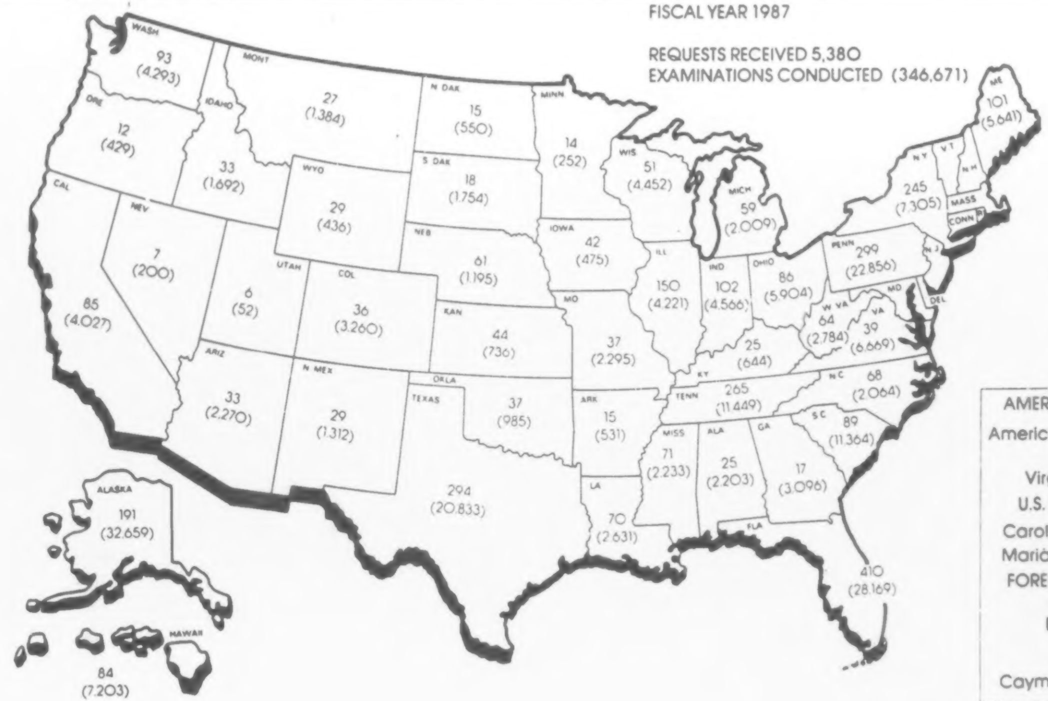
Exhibit No. 46

FBI LABORATORY

ASSISTANCE TO NON-FEDERAL LAW ENFORCEMENT AGENCIES

FISCAL YEAR 1987

REQUESTS RECEIVED 5,380
EXAMINATIONS CONDUCTED (346,671)


WASH 93 (4,293)
ORE 12 (429)
CAL 85 (4,027)
IDAHO 33 (1,692)
NEV 7 (200)
MONT 27 (1,384)
WYO 29 (436)
UTAH 6 (52)
ARIZ 33 (2,270)
COL 36 (3,260)
N MEX 29 (1,312)
N DAK 15 (550)
S DAK 18 (1,754)
NEB 61 (1,195)
KAN 44 (736)
OKLA 37 (985)
TEXAS 294 (20,833)
MINN 14 (252)
IOWA 42 (475)
MO 37 (2,295)
ARK 15 (531)
LA 70 (2,631)
WIS 51 (4,452)
ILL 150 (4,221)
MISS 71 (2,233)
MICH 59 (2,009)
IND 102 (4,566)
KY 25 (644)
TENN 265 (11,449)
ALA 25 (2,203)
OHIO 86 (5,904)
GA 17 (3,096)
FLA 410 (28,169)
W VA 64 (2,784)
VA 39 (6,669)
N C 68 (2,064)
S C 89 (11,364)
PENN 299 (22,856)
N Y 245 (7,305)
ME 101 (5,641)
VT
N H
MASS
CONN
R I
N J
MD
DEL
ALASKA 191 (32,659)
HAWAII 84 (7,203)

VT 81 (1,433)
NH 42 (854)
MA 92 (4,588)
CT 48 (1,846)
RI 75 (6,400)
NJ 212 (14,197)
DE 147 (13,241)
MD 483 (23,454)
DC 636 (56,151)

AMERICAN POSSESSIONS
American Samoa 1 (7)
Guam 17 (1,777)
Virgin Islands 54 (2,999)
U.S. TRUST TERRITORIES
Caroline Islands 1 (8)
Mariana Islands 4 (259)
FOREIGN GOVERNMENTS
Bahamas 2 (42)
British West Indies 5 (312)
Canada 1 (10)
Cayman Islands 1 (10)

Exhibit No. 47

Exhibit No. 48

FINGERPRINT IDENTIFICATION

The FBI's Identification Division serves as the Nation's centralized repository and clearinghouse for fingerprint records. In that capacity, the FBI furnishes identification and criminal history record services to over 62.1 agencies which are authorized to use these services by Federal statutes, regulations, and Executive Orders. The FBI's fingerprint files act as a "locator" or "index" of criminal arrest activity throughout the United States, thus avoiding time-consuming and costly checks of all 50 states to ascertain a person's complete criminal history.

When the FBI was authorized by Congress in 1924 to collect and disseminate fingerprint cards and arrest record information, it began operations with about 810,000 fingerprint cards. As of February 1, 1988, the FBI possessed over 183 million fingerprint cards, of which over 97.7 million contain criminal history data for over 24.4 million persons. The remaining 85.3 million fingerprint cards relate to over 36 million persons who have been fingerprinted in connection with employment in Federal agencies, military service, alien registration, and personal identification.

The reliance placed upon the FBI's services is evidenced by its enormous workload. During each workday of 1987, the Identification Division received an average of 58,123 pieces of mail, of which 31,384 were fingerprint cards and 26,739 were other types of mail, including name check requests, arrest disposition reports expunction/purge requests, and requests by individuals to review and/or revise their records. These items of mail were submitted by Federal, state, and local criminal justice agencies for law enforcement purposes; Federal, state, and local government agencies and officials for employment and licensing purposes; authorized foreign governments for international police cooperation purposes; and banking and securities and commodities futures institutions for employee security purposes.

The FBI provides the following services: arrest and applicant fingerprint card identification and record keeping; posting of wanted and parole/probation notices; examining physical evidence for latent fingerprints and the providing of court testimony as to the results of examinations, if needed; training in fingerprint science; maintaining fingerprint records of persons currently reported missing; and the identifying of amnesia and unknown deceased persons.

Major accomplishments during 1987 included: the processing of over 7.7 million fingerprint cards and over 6.7 million pieces of other correspondence; the identification of 23,615 fugitives by their fingerprints; the handling of 15,908 latent fingerprint cases, some of which involved the use of advanced laser technology; the furnishing of assistance in the identification of deceased victims in three air disasters, a hotel fire in San Juan, Puerto Rico; and the attack on the U.S.S. Stark in the Persian Gulf.

Since 1983, the FBI has operated a user-fee system in which a fee is charged for processing each applicant fingerprint card submitted by banking institutions, securities and commodities future industries, and state and local employment and licensing authorities. These fees are used to pay for the personnel and related nonpersonnel costs of providing this service. During 1987, the FBI processed 1,325,905 revenue-producing fingerprint cards and collected $17,295,145 in processing fees.

- Fingerprint Identification Accomplishments

Major work production accomplishments of the FBI's Identification Division for 1987 include:

Category of Accomplishment	Number of Accomplishments
Fingerprint cards processed	7,765,494
Correspondence, forms and name checks processed	1,509,510
Expedite and special requests processed	256,795
Disposition reports processed	4,596,108
Wanted and probation/parole notices maintained on file	110,417
Fugitives identified by fingerprints	23,615
Expungement and purge requests processed	418,775
Nonserious offense entries deleted from arrest records	86,546
Latent fingerprint cases handled	15,908
Suspects identified as the result of latent fingerprint examinations	2,459
Federal, state and local court appearances made by FBI Latent Fingerprint Examiners	294
Sentences in cases where court appearances made:	
Prison terms (years)	2,318
Life sentences	41
Death sentences	9

- Automation of Fingerprint Identification Operations

The FBI has pursued a program to automate the work operations of the Identification Division for nearly 19 years. Starting in 1967, the FBI sponsored research to develop: (a) computerized equipment which would automatically scan and read inked fingerprints appearing on fingerprint cards; and (b) computer programs which would compare and match the computerized fingerprint data. By 1969, experimental models of fingerprint reader equipment and matching programs had been successfully demonstrated. A study performed in 1971 concluded that it would be technically, economically, and operationally feasible to incorporate automated fingerprint reader and matching equipment, as well as name searching and response generation capabilities, into the FBI's fingerprint work operations. Consequently, the FBI devised an overall plan to develop a fully automated system to be known as the Automated Identification Division System (AIDS). Due to the magnitude of the automation task, it was necessary to divide the project into three phases (AIDS-I, AIDS-II, and AIDS-III) and implement the phases over a period of several years. In September 1987, the AIDS-III system was renamed the Automated Identification System (AIS) to more clearly define it as one of several systems being developed to replace manual operations and records rather than implying the complete automation of the Identification Division.

The following progress has been achieved toward the goal of fully automating the FBI's fingerprint work operations:

Year	Fingerprint Identification Automation Milestones
1972	Prototype automatic fingerprint reader system is delivered to the FBI.
1973	AIDS-I operations begin on August 30, 1973. This phase provides for the building of a computerized file of identification and arrest data on first offenders, the printing of indices cards, and the generation of the "No Record" or arrest record responses to fingerprint cards and name check requests. To date, over ten million "first offender" records have been entered into the system and kept updated with subsequent arrest and disposition data.
1976-77	Five production-model fingerprint readers are delivered and placed into operation, converting the criminal fingerprint search file into computerized form. To date, over 19.5 million fingerprint cards have been converted.
1979	AIDS-II supersedes AIDS-I on October 18, 1979. This phase, which is the one presently operational, provides for enhanced capabilities, e.g., "on-line" versus "batch" processing, and computerized name searching in place of the manual name indices. Computerized name searching of the automated arrest record file was initiated on October 29, 1979, and now represents about 99 percent of the name searching performed. Pilot automated fingerprint searching operations are initiated in 1 of the 23 units of the criminal fingerprint searching file.
1981	A semiautomatic fingerprint reader system, with 20 input stations, is delivered. This equipment is used to computerize fingerprints which cannot be read by the fully automatic fingerprint readers due to low-quality inked fingerprints and latent fingerprints.
1982	An automated user-fee system is implemented to charge for the processing of noncriminal/non-Federal applicant fingerprint cards.
1983	Automated fingerprint searching operations are expanded to all units of the criminal fingerprint searching file. Presently, about 95 percent of the fingerprint searching is performed automatically.
1984	Over eight million "rap sheets": contained in the FBI's fingerprint files become available on-line through the National Crime Information Center (NCIC) telecommunications network as part of the NCIC Interstate Identification Index (III). The request and response are transmitted on-line in a matter of seconds to the many of thousands of NCIC users throughout the country.
1985	The contract for the AIS-Phase III was awarded on January 2, 1985, to Science Applications International of McLean, Virginia. This phase will combine all of the previously developed capabilities to make a fully integrated highly efficient system.

Year	Fingerprint Identification Automation Milestones (cont)
1986	Construction was implemented on the new major computer center for the AIS-III, this system will replace two major automated systems and will reduce the Identification Division's processing time for 95 percent of the fingerprint cards and other documents to one day. It will also support the NCIC'S III concept for decentralizing arrest records. In July 1986, the contractor moved the development effort into the J. Edgar Hoover F.B.I. Building after installing the AIS-III computers in the new computer center. Computer programming resulted in the second release for testing.

During 1987, numerous modifications to the original specifications because of procedural changes and enhancements added, delayed the scheduled December implementation date. It has been reset for June 1988.

Construction relative to the implementation of AIS-III was completed. The fingerprint card transport system, the document transport system and most workstation terminals and associated equipment was installed. Testing is ongoing and several discrepancies have been found to exist. These discrepancies are being worked on and will be resolved. All basic computer hardware scheduled for installation in 1987 was installed.

On December 12, 1987, the fifth and final Automatic Fingerprint Reader System (AFRS) to be improved was placed into a fully operational production mode. The five new systems now in production are capable of processing more than twice the fingerprint cards per hour than all five of the original AFRSs. This is the result of the automatic fingerprint reader subsystem improvement project which began three and one-half years ago.

Following are exhibits showing annual fingerprint card receipts from 1983 through 1989 and a breakdown by type of the number of fingerprint cards on file as of February 1, 1988.

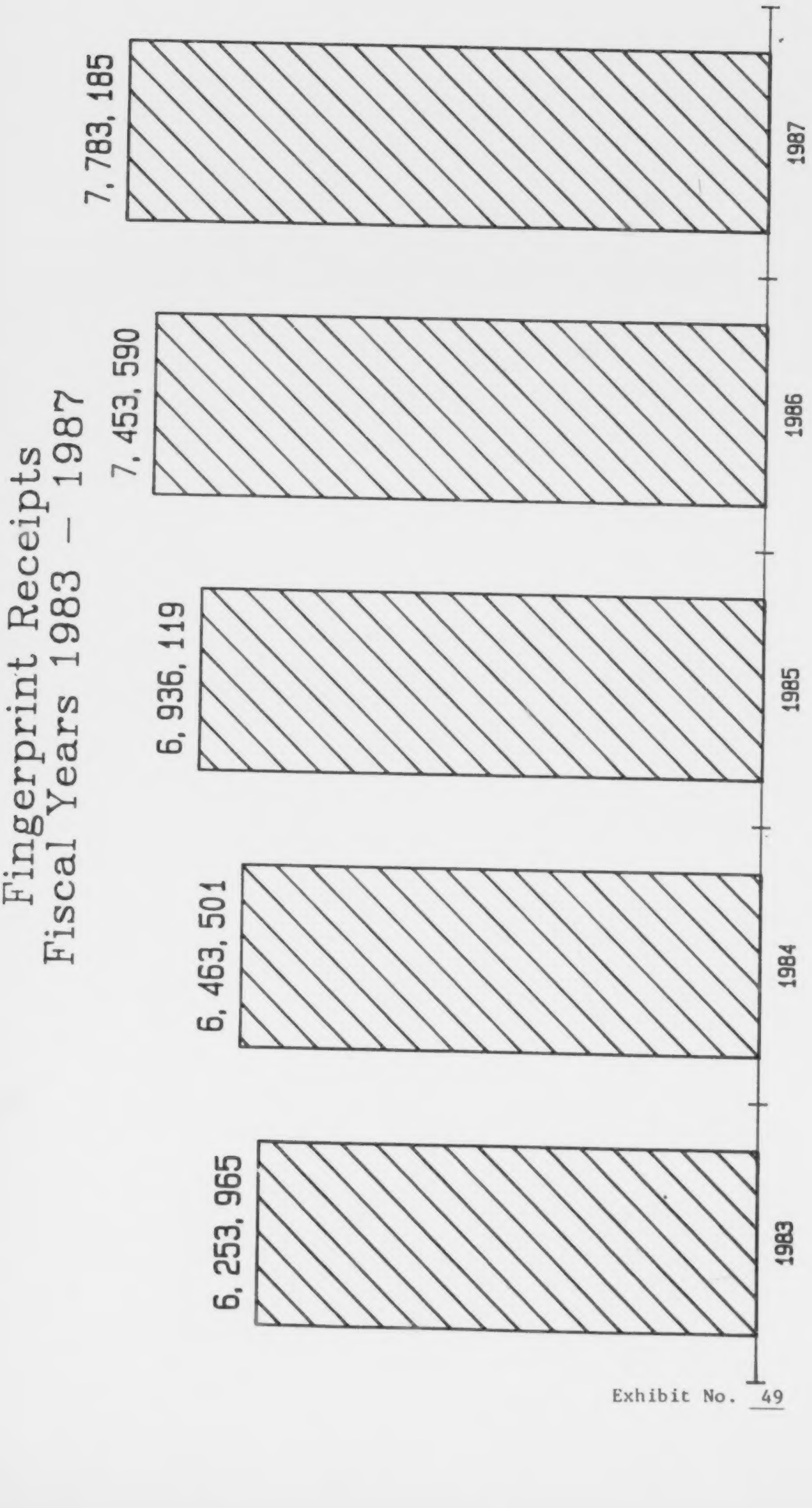
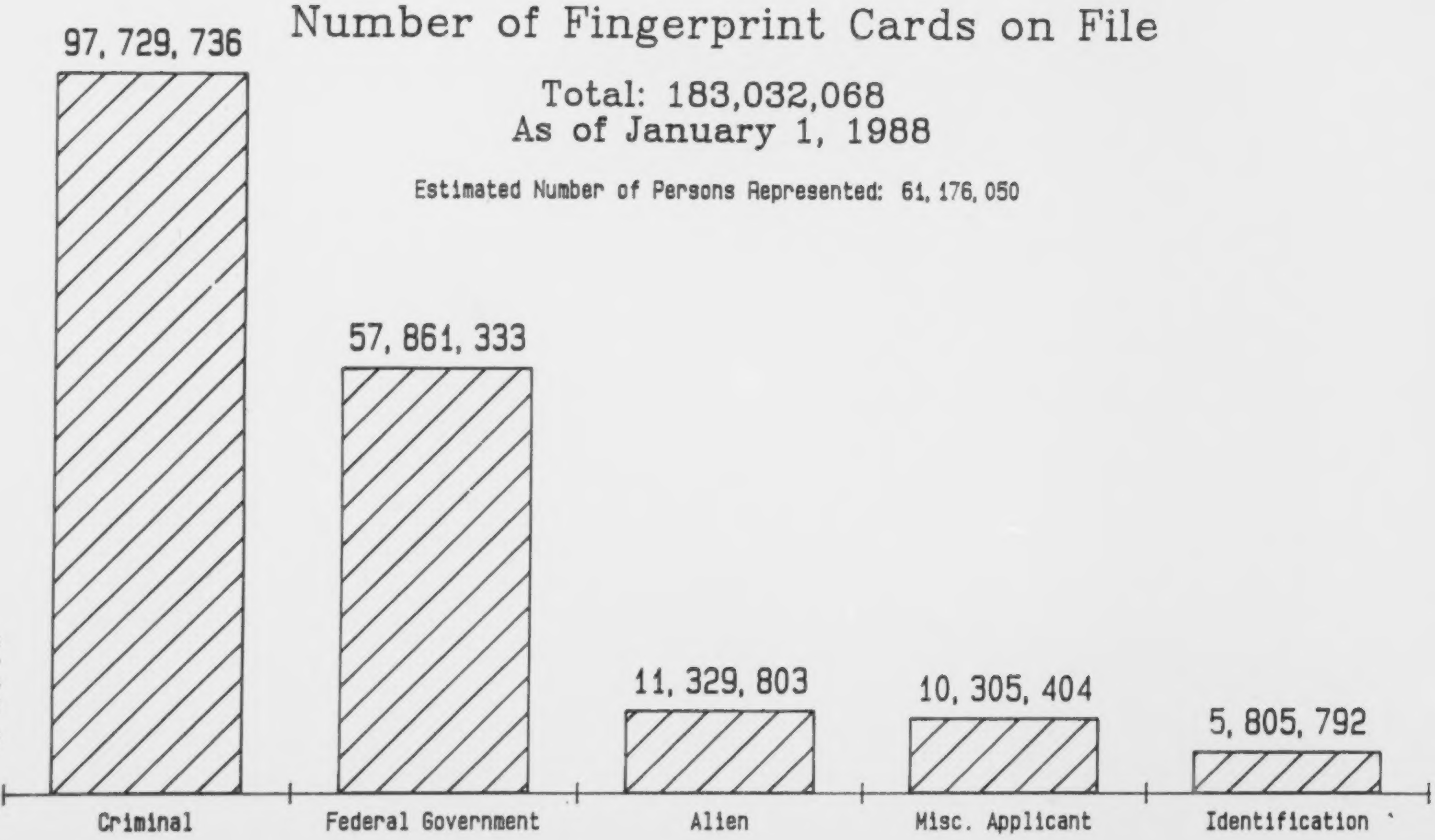


Exhibit No. 49



Number of Fingerprint Cards on File

Total: 183,032,068
As of January 1, 1988

Estimated Number of Persons Represented: 61,176,050

Exhibit No. 50

RECORDS MANAGEMENT PROGRAM

The Records Management Program is multifaceted, consisting of several distinct functional units responsible for assuring that information is maintained and available to support FBI operations. Information management is no longer simply the management of hard copy records, but the management of the life-cycle of information regardless of the form information may take. The FBI has turned to meeting the challenge of information management life-cycle by exploring a wide range of modern technologies and applying those technologies to automate labor intensive processes and thereby increasing efficiency and effectiveness.

The Office of Automation and Information Management (OAIM) is responsible for all automated information management initiatives within the program, and continues to support the Field Office Information Management System (FOIMS). FOIMS increasingly brings advanced information management systems to support field offices and speeds the reporting of investigative operations and makes basic information available in a more manageable form.

The National Name Check Program processed 2,207,813 name check requests during 1987. These requests were from executive branch agencies, certain Congressional committees, the Federal judiciary, foreign police and other agencies, and state and local agencies within the criminal justice system. Included in the above total were 64,646 name checks processed for the Immigration and Naturalization Service.

Under the FBI's Security Program, security clearance investigations were performed, focusing on the "trustworthiness" of an individual for access to National Security Information. Additionally, briefings/debriefings for individuals and groups were performed and security clearances or special accesses regarding FBI employees were certified.

The Records Management Program, through cost-savings initiatives, realized a savings of $459,803 in mailing costs.

The Freedom of Information and Privacy Act Section received 13,588 requests and processed/closed 12,882 inquiries. In addition, 793 administrative appeals, and 71 FOIPA litigation matters were resolved.

Exhibit No. 51

AUTOMATED DATA PROCESSING AND TELECOMMUNICATIONS OPERATIONS

The Automated Data Processing and Telecommunications (ADP/T) program provides the FBI with information collection, storage, retrieval, and dissemination capabilities through the use of automated data processing, telecommunications, and word-processing resources. The FBI uses ADP/T resources to directly support investigative as well as administrative requirements whenever it will achieve greater efficiency. In addition to meeting its own requirements, the FBI also dedicates a significant amount of its data processing resources to support certain related needs in the entire criminal justice community. Investigative, administrative, and law enforcement support information systems are managed centrally to make the most efficient use of the FBI's computer resources.

• Expert System Development

In 1984, the FBI began an initiative to apply artificial intelligence (AI) techniques to support several specific high-priority investigative needs consistent with the FBI's Long Range Automation Strategy. The FBI has initiated efforts to apply AI in the form of knowledge-based expert systems to support investigations in several areas, including labor-racketeering, narcotics, counterterrorism, decision support, and name searching. Significant progress in the development of a broad range of AI applications has been made during the 1985-1987 time frame, particularly in the successful fielding of AI prototypes. Presently, a prototype of the labor racketeering system is being used to support a major investigation in a Midwestern city. Use of the narcotics interdiction system at the El Paso Intelligence Center has resulted in the recovery of approximately $10 million in illegal drugs.

• Field Office Information Management System

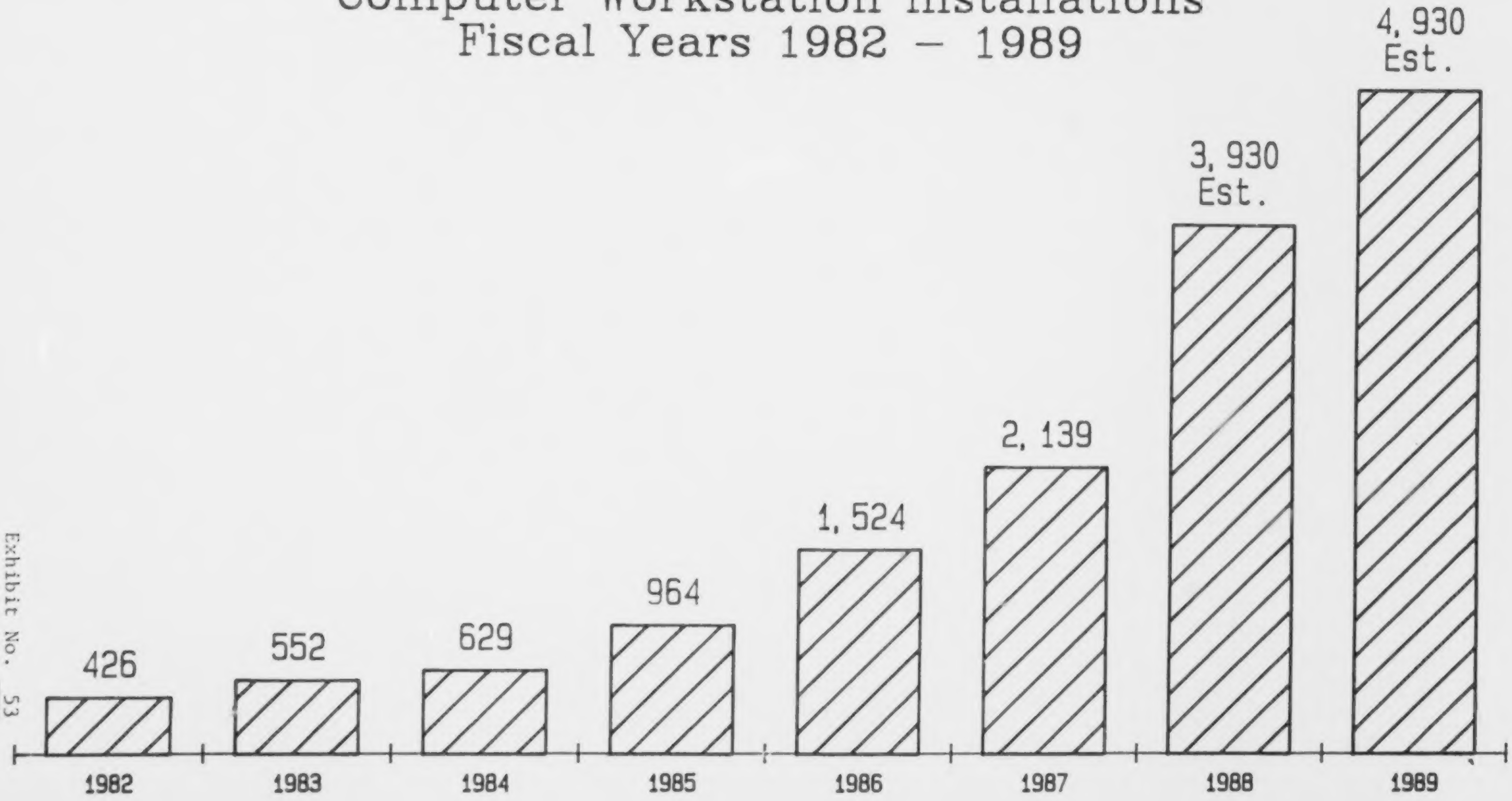
Implementation of the Field Office Information Management System (FOIMS) continues. During 1987, a contract was awarded for the purchase of approximately 2,800 computer workstations. Over a five-year period, as many as 8,000 computer workstations may be acquired to support FBI automated information system requirements. Base-line FOIMS capabilities are available to 39 field offices as of December 1987; all field offices will be on-line with base-line FOIMS by the end of 1988. Major milestones in standardizing operating environments among the FBI Headquarters Computer Center and regional computer support centers were achieved. Construction of the Western Regional Computer Support Center was completed.

The following exhibit shows field office computer workstation installations.

Exhibit No. 52

Exhibit No. 53

Field Office
Computer Workstation Installations
Fiscal Years 1982 - 1989



NATIONAL CRIME INFORMATION CENTER

The National Crime Information Center (NCIC) is a nationwide criminal justice information teleprocessing network which provides documented criminal justice information to the entire criminal justice community. NCIC contains records on stolen property, i.e., vehicles, license plates, guns, securities, boats, and serialized articles; wanted persons for whom arrest warrants are outstanding; criminal histories on persons arrested for serious offenses; unidentified persons; and missing persons meeting specific entry criteria. An NCIC Advisory Policy Board, made up of Federal, state, and local criminal justice officials, furnishes advice to the FBI Director on policy matters concerning NCIC operations and thereby allows the users a voice in the overall management of the system. The users of NCIC, which include the criminal justice agencies in the 50 states, all Federal law enforcement agencies, the Royal Canadian Mounted Police, the Police of the Commonwealth of Puerto Rico, and the United States Virgin Islands, obtain these services on a cost-free basis.

NCIC became operational more than 20 years ago, on January 27, 1967. At that time there were 15 agencies participating. During the first year of operation, NCIC logged 2,500,000 transactions--an average of 6,580 per day. At the end of 1967, approximately 357,000 records had been entered in the system. By 1987, the number of participating agencies had grown to over 57,000, with over 207,000,000 transactions recorded--an average of more than 568,000 per day. As of January 1988, nearly 19,000,000 records were maintained in the NCIC data base.

In July 1987, the Foreign Fugitive File was implemented. This file contains both Canadian warrants and new wanted persons records for foreign fugitives entered by the United States National Central Bureau of the International Police Organization (INTERPOL).

- NCIC 2000 Project

In 1985, the FBI and representatives of the NCIC user community developed a statement of work to define NCIC functional requirements through the year 2000. The resulting blueprint for the redesign of NCIC calls for using state-of-the-art technology and includes features to improve and maintain accuracy and completeness of data in NCIC. In 1986, the FBI contracted services from the MITRE Corporation to conduct an analysis of NCIC's functional requirements through the year 2000. This system design study will be completed in 1988.

Following is an exhibit showing annual NCIC transactions from 1983 through 1987.

Exhibit No. 54

National Crime Information Center
Annual Transactions
Fiscal Years 1983 - 1987

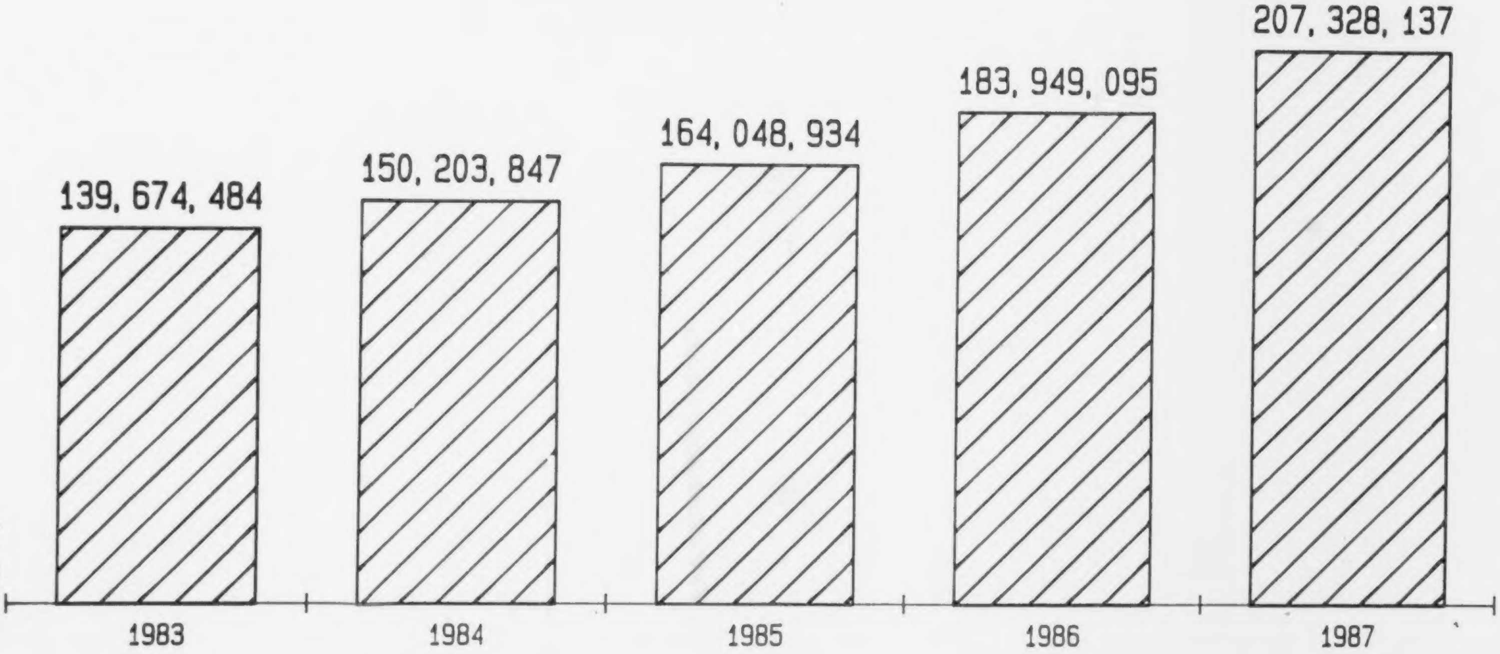


Exhibit No. 55

UNIFORM CRIME REPORTING PROGRAM

The Uniform Crime Reporting program was conceived and implemented by our Nation's law enforcement agencies in 1930. At its inception, two basic needs were recognized. First, it was believed the American people deserved an accounting of the extent and nature of criminal activity. Second, law enforcement leaders needed an administrative tool to better manage their departments.

On a monthly basis, statistical data concerning the incidence of criminal acts from over 16,000 individual law enforcement agencies nationwide is collected. Data collection is grouped according to certain basic types of offenses, namely, murder, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. These categories comprise the Crime Index. Additionally, statistical information on arrests, property loss, and other factors relevant to criminal activity is aggregated. Collected and analyzed data are disseminated in various formats, such as:

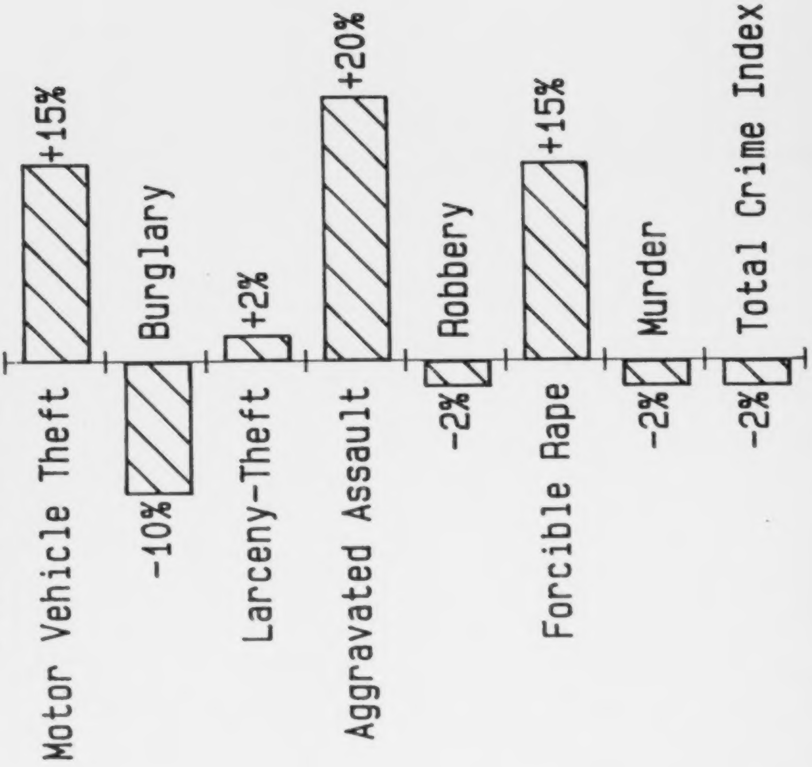
-Semiannual releases on crime trends, law enforcement officers killed, and bombing incidents, and

-Annual publications of "Crime in the United States," "Law Enforcement Officers Killed and Assaulted," "Bomb Summary," and "Arson."

Substantial cooperative efforts at all levels of the law enforcement community are necessary in gathering the data upon which the Uniform Crime Reporting program depends. The benefits derived from the program are indeed significant and have resulted in an increased understanding of the crime problem which confronts the citizenry of this country.

The following exhibit shows the percent change in Uniform Crime Reporting program index offenses between the years 1986 and 1982.

Exhibit No. 56



Crime in the United States
Percent Change
1986 versus 1982

Exhibit No. 57

PROGRAM DIRECTION

THE PROGRAM DIRECTION BUDGET ACTIVITY PROVIDES RESOURCES FOR THE EXECUTIVE DIRECTION AND CONTROL AND ADMINISTRATIVE SERVICES PROGRAMS. THESE PROGRAMS SUPPORT THE EXECUTIVE MANAGEMENT, LEGAL, PLANNING, INSPECTION, ADMINISTRATIVE, AND FINANCIAL MANAGEMENT FUNCTIONS OF THE FBI. DURING 1989, THE FBI WILL REQUIRE 1,287 POSITIONS, 1,244 WORKYEARS, AND $55,248,000 FOR PROGRAM DIRECTION ACTIVITIES.

INCREASED RESOURCES ARE REQUESTED TO HANDLE GROWING ASSET FORFEITURE MATTERS, PERFORM CONGRESSIONALLY-MANDATED UNDERCOVER OPERATIONS AUDITS, AND CONDUCT GENERAL LEDGER AND OTHER OPERATIONAL AUDITS.

Exhibit No. 58

ADMINISTRATIVE SERVICES PROGRAM

The goal of the Administrative Services Program is to provide a complete range of administrative services required to maintain the FBI as a functional entity. This goal is supported through three program areas.

- Personnel Services Program. The Personnel Services Program is responsible for: the administration, coordination, and policy formulation of pay administration, retirement, leave, safety, disciplinary action, employee performance, recognition, and orientation, applicant recruitment, employee transfers, and compiling and reporting personnel statistical data. This program is also responsible for the administration of the Performance Appraisal and Merit Pay Systems, coordination and implementation of the FBI's Equal Employment Opportunity and Affirmative Action Programs, and Employee Assistance Program, to include the Mandatory Drug Deterrence Program.

- General Services Support Program. This program is responsible for the procurement of all equipment, goods, services, and supplies. Additionally, the General Service Support Program manages FBI equipment, inventory, and stock, as well as processes property seized in forfeiture actions. Other responsibilities include printing, warehousing, security, safety, and space management, including the acquisition, alteration, renovation, and release of GSA controlled space.

- Systems Support Program. The Systems Support Program is responsible for all phases of accounting functions, including all types of voucher payments and acquisitions, coordination of the automation of the financial accounting system, and preparations of various financial reports and schedules. Also handled by this program is the preparation of the FBI's payroll and distribution of statements of earnings, salary and expense checks, leave accounting records, and savings bonds. Relocation and travel matters and vouchers relating to field support accounts, imprest fund, and undercover operations are also included within the responsibilities of this program.

Exhibit No. 59

Special Agents Hired
Fiscal Years 1983 - 1987

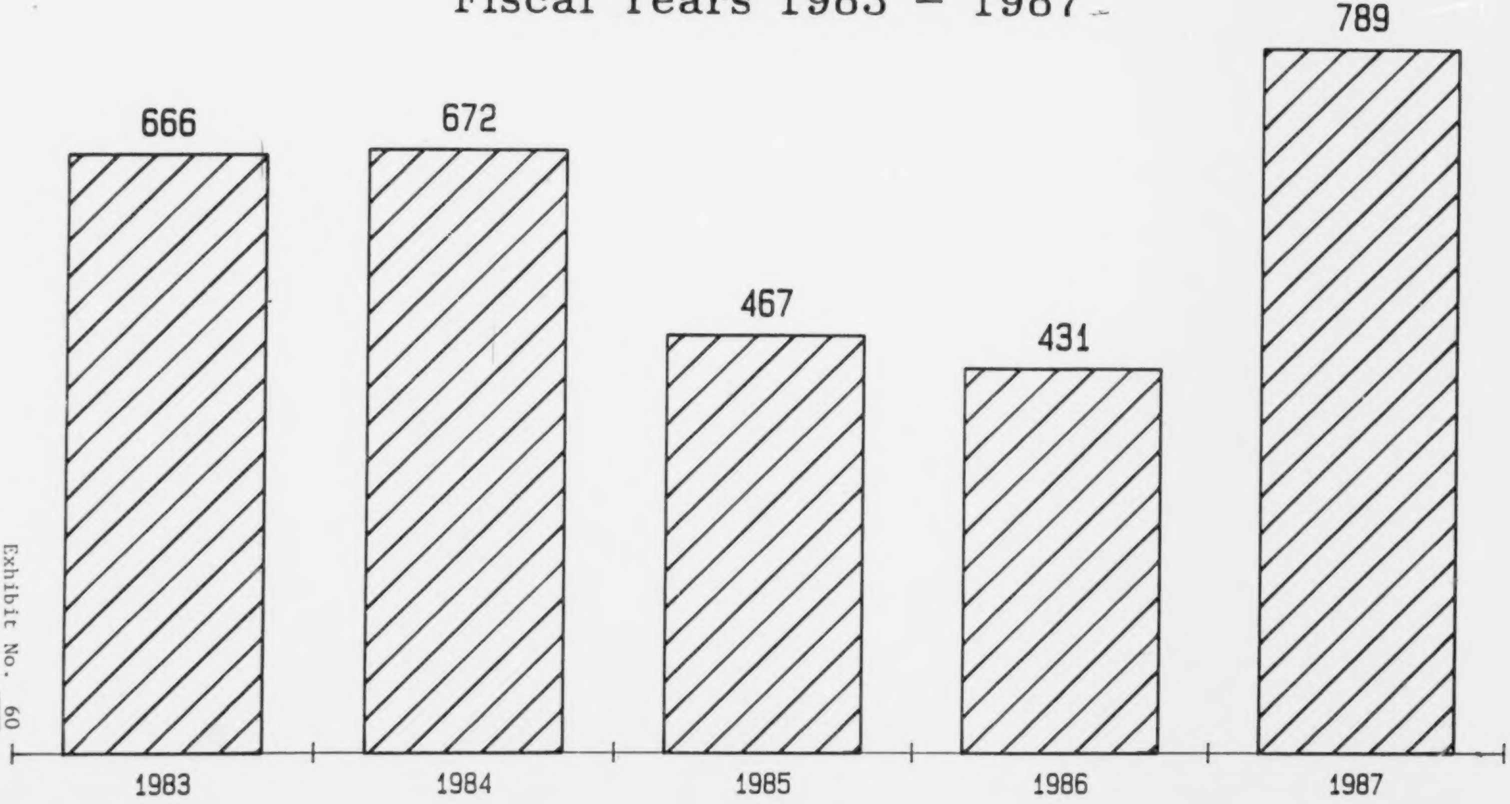


Exhibit No. 60

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Federal Bureau of Investigation

1989 Budget Request

QUESTION: The 1989 Budget requests $1.5 billion for the Federal Bureau of Investigation. How much of this $115 million or 8.3 percent increase over 1988 is devoted to drug enforcement?

ANSWER: The Drugs program increase request of 79 support positions and $3.6 million represents approximately 11 percent of the FBI's total support position request and approximately 4 percent of budget authority requested for 1989. The Drugs program also includes uncontrollable adjustments to base of $4.9 million. Out of the $115 million increase, $8.5 is directly associated with the FBI's Drugs program, one of the four field investigation programs. In addition, the various support programs of the FBI augment the drug effort.

The FBI's Drugs program request includes: 36 Organized Crime Information System (OCIS) analysts, 8 Intelligence Research Specialists, 15 Investigative Assistants, 20 non-agent pilots, and personnel-related funding of $1,320,000, as well as $2,285,000 for confidential case funding. The FBI's total request for support positions is 689; the 79 positions for the Drugs program represent 11 percent. There is no agent increase.

FBI/DEA Coordination

QUESTION: The Drug Enforcement Administration (DEA) was established in 1973 to enforce the Federal drug laws (Title 21, U.S. Code), and it has served as the lead agency for Federal drug law enforcement. However, in 1982, the FBI was also given the authority to enforce Title 21 and is now responsible for the general supervision of drug enforcement efforts. While the DEA remains a separate entity, the DEA Administrator, Mr. John Lawn, reports to the Director of the FBI, Judge Sessions. This arrangement was designed to improve Federal drug enforcement. What are the advantages of giving drug law enforcement authority to the FBI? Is it simply that more agents are now working drug cases?

ANSWER: Since charged with investigating violations of the Controlled Substances Act in 1982, the FBI has successfully employed long-term, sustained investigations to combat drug trafficking. Through intelligence-gathering Racketeer Enterprise Investigations, the FBI has identified more than 450 Colombian/South American, Mexican, Italian and Asian drug trafficking organizations collectively posing the greatest threat to the United States.

The FBI has addressed that threat through implementation of its National Drug Strategy (NDS). That strategy was devised to maximize use of the FBI's long experience in conducting traditional organized crime investigations and then applying investigative techniques so successful in that area to drug enforcement. The fruits of that effort are represented, in part, by the more than 2,850 convictions realized by the FBI in 1987 and the $61.7 million in ill-gotten assets seized during that same period. More important than the statistical accomplishments is the fact the FBI has struck a significant blow at the top echelon of many drug trafficking enterprises.

The FBI's ability to manage long-term and complex investigations is unparalleled. To maximize the use of resources, the FBI has extensively employed Title III electronic surveillance as a means to develop evidence on the most secretive drug conspiracies. In many instances, undercover operations, using the resources of numerous FBI field offices, have enabled the FBI to develop evidence on national drug conspiracies operating across the country. The historic "Pizza Connection" case, a six-year investigation, tracked the activities of a major Sicilian Mafia heroin trafficking organization through six States and in Italy. By the latter part of 1987, 18 defendants, including a former Sicilian Mafia "Boss of all Bosses," were sentenced to jail terms up to 41 years. Operation Cashweb/Expressway, a three-year undercover operation, penetrated the highest levels of three money laundering organizations of Colombian drug trafficking syndicates. So far, 114 conspirators have been indicted. Over 2,100 pounds of cocaine, 22,000 pounds of marijuana and $22.5 million in cash were seized. Another $300 million in Colombian drug proceeds, much of it in Panamanian bank accounts, was identified. Another investigation symbolizing the FBI's ability in managing long-term cases is the Herrera Mexican heroin trafficking case. That four-year investigation, which employed 14 court-authorized electronic surveillances continually over a nine-month period, resulted in more than 75 convictions. Related Mexican drug cases, extending from the southwest United States border to Chicago, Illinois, are ongoing.

Complex drug investigations require strict case management in the field and a wholly coordinated method of centralized oversight at Headquarters. These investigations are personnel-intensive, but it is the management of those resources that leads to successful cases. Such management is the hallmark of the FBI and its National Drug Strategy.

QUESTION: To what extent have the functions of the two agencies been integrated? For example, do FBI and DEA agents working drug cases have the same qualifications and training? Do the agents have access to the same drug intelligence systems?

ANSWER: In August 1984, the Director established an executive-level committee, now called the FBI/DEA Coordination Committee, to develop initiatives to avoid duplication, effect economy, and make the operations of the FBI and DEA more effective and efficient. Since that time, under the direction of the FBI Executive Assistant Director for Administration and through subcommittees co-chaired by FBI and DEA executives, the Committee has undertaken 60 initiatives. They ranged in scope from feasibility studies to the actual integration of FBI and DEA components and activities, including areas of Administration and Budget, Congressional Liaison, Planning and Inspections, and Technology.

Other initiatives are in various stages of implementation:

- the development of the FBI/DEA Joint Drug Plan in Chicago, Houston, Los Angeles, Miami, New York, and San Diego. Joint Drug Plans are viewed as mechanisms for addressing major drug trafficking organizations in a given region using the combined talent and experience of both agencies;

- the formation of an FBI Drug Intelligence Unit at DEA Headquarters to more fully utilize DEA intelligence information to enhance FBI and DEA Joint Drug Plan investigations and, in the long-run, to assist in identifying trends and making projections of organized drug trafficking on a national basis;

- development of tactical radio communications interoperability in the field to support investigative operations;

- collocation of training personnel and functions to the FBI Academy at Quantico, Virginia;

- cross-assignment and collocation of supervisory and intelligence personnel at the headquarters levels to increase program coordination;

- technical support of the El Paso Intelligence Center, to include the development and continued implementation of Project Tiger Paw; and

- collocation of engineering facilities, functions, and training.

Consistent with the investigative mandates of each agency, FBI and DEA special agents with a wide variety of educational qualifications and work experiences are recruited for training and employment as professional investigators. FBI and DEA special agents receive their initial drug law enforcement training at the FBI Academy, Quantico, Virginia. The DEA has drug investigative and related diversion and regulatory responsibilities. Consistent with their mission, DEA concentrates virtually all of its new agent training on drug law enforcement and on related enforcement responsibilities.

The FBI, however, has a much broader investigative mandate encompassing over 260 Federal violations, including drug law enforcement. The FBI provides an initial block of training to its new agents consistent with our investigative approach as defined in our National Drug Strategy. FBI and DEA special agents continue to receive specialized drug training in the field and at advanced in-service training courses at the FBI Academy.

FBI and DEA special agents share access to DEA's Narcotics and Dangerous Drugs Information System and the FBI's Organized Crime Information System. In addition, agents from both agencies have access to the Treasury Enforcement Communications System through the El Paso Intelligence Center as well as the same access to drug intelligence systems of other Federal, State, and local drug law enforcement agencies.

A major initiative currently underway to maximize efficiency and effectiveness of combined FBI/DEA intelligence and investigative efforts is the FBI/DEA Technical Advisory Group. The mission of the Technical Advisory Group is to assess the feasibility of developing a centralized computer data base to store and analyze all drug information developed by the FBI and DEA and then furnish finished intelligence products to each agency.

QUESTION: Are there differences in the investigative approaches and methods of the two agencies? Do they have different criteria for selecting investigative targets? If so, please explain how they differ and whether one agency is better suited than the other for certain types of investigative work.

ANSWER: The FBI's National Drug Strategy is designed to focus drug investigative resources on those top-level Colombian/South American, Mexican, Italian, and Asian drug organizations trafficking in cocaine and heroin. DEA's multi-objective mission in drug enforcement requires a diffusion of resources to address regulatory licensing and diversion of licit drugs from legitimate channels of manufacture and distribution as well as the investigation of major drug traffickers. DEA commits substantial resources to dangerous drug clandestine laboratory operations, and State and local tasks forces directed against street-level and local drug distribution groups.

The differing objectives of the FBI and DEA quite naturally require investigative approaches keyed to the individual agency's specific objectives. For example, the FBI's proven expertise in attacking and dismantling organized crime groups has been applied successfully to drug investigations where control is held by multi-faceted, international drug trafficking organizations. The successful investigation of such organizations requires not only a continuous commitment of agent personnel, it requires a continuity of agent personnel.

DEA's investigative targeting criteria, Geographical Drug Enforcement Program (G-DEP), is essentially a method of target classification to ensure the proper focus of personnel. In that sense, G-DEP is roughly an equivalent function to the National Drug Strategy (NDS). In form, however, G-DEP's principal classification criteria are based on the type and quantity of drugs involved and the individual targeted. In contrast, the FBI's NDS mandates targeting the organization as an entity. The difference is not merely semantic. An FBI National Drug Strategy investigation does not focus on the arrest of the principal. Instead, the FBI investigation is not complete until the organization is dismantled.

In January 1988, the FBI and DEA adopted a Joint Drug Plan to identify and target major Colombian/South America, Mexican, and Chinese drug trafficking organizations in Chicago, Houston, Los Angeles, Miami, New York and San Diego. These organizations would be addressed through investigations conducted on a long-term, sustained basis using extensive electronic and physical surveillance coverage and sophisticated undercover investigative techniques. Over 34 percent of the FBI's total agent resource commitment to drug enforcement is deployed in the six field offices, and DEA has a similar financial and personnel resource commitment in those regions. Joint Drug Plans are viewed as important mechanisms for addressing major drug trafficking organizations in a given region using the combined talent and experience of both the FBI and DEA. This initiative emphasizes centralized program management support and oversight.

The Joint Drug Plan is closely aligned to the National Drug Policy Board's (NDPB) Lead Agency Strategies and coincides with the goals and objectives of the FBI's National Drug Strategy. The organizational approach to drug investigations in the Joint Drug Plan is the first priority in the NDPB's National Narcotics Prosecution Strategy. That strategy commits 80 percent of Department of Justice prosecutorial drug resources to pursuing major drug trafficking enterprises responsible for drug importation, manufacture, and distribution in the United States.

The FBI assumed concurrent drug investigative jurisdiction in 1982 in order to broaden the front of attack in the war on drugs. Clearly, the FBI was expected to employ its proven organizational investigative approach to address the drug cartels. It was not a question then, nor is it now, of which approach, the FBI's or DEA's, is better. Rather, the issue is that both approaches are complementary and critical to stemming the tide of the flow of drugs into this country.

QUESTION**: Have there been any problems between the FBI and DEA relating to the FBI conducting drug investiga-**

tions? If so, what have they been, what corrective action has been taken, and what has been the results?

ANSWER: Problems that did exist between the FBI and DEA were most evident in the early stages of concurrent jurisdiction in enforcing the Controlled Substances Act. Problems that arose were rooted primarily in the intense pride and confidence that each agency has in its capabilities, their aggressive stance in addressing their enforcement mandate, and instances of overlapping investigative activity. Pride, confidence and aggression, channeled towards productive ends, have never subsided and hopefully never will. Overlapping investigative activity, although never excessive, created certain shared animosity among some of our field agents. FBI Headquarters' personnel were not exempt. From 1982, when concurrent jurisdiction was instituted, until 1985, several initiatives assuaged unproductive relations.

In the field, special agents in charge (SACs) conferred with their DEA counterparts, on a case-by-case basis, on joint initiatives to maximize their offices' impact in areas of mutual investigative interest. The FBI and DEA in Dallas in 1983, were at the forefront of confronting interagency problems. Enhanced liaison that began as mandated weekly conferences between FBI and DEA supervisors emerged in October 1983 into a totally integrated FBI/DEA Task Force Squad collocated at DEA's Dallas Division Office. That initiative, in a period of 15 months, produced 31 drug convictions, representing 74 percent of the drug-related convictions in the FBI's Dallas Field Office.

An on-site review of that program in December 1984 by FBI Headquarters personnel, praised the Task Force for "surmounting professional parochialisms." The same study, on other hand, however, concluded that cooperative efforts had not spawned high-quality cases and an enhanced intelligence base was sorely needed. FBI Headquarters recognized that mere collocation of personnel was not the answer to generating high-impact drug cases.

FBI and DEA Headquarters, which had earlier instituted a Supervisory Exchange Program, accelerated their efforts to stimulate a more cooperative atmosphere field-wide through more frequent meetings of the established FBI/DEA Advisory Group. Co-chaired by the Criminal Investigative Division's Deputy Assistant Director and DEA's Deputy Assistant Administrator for Operations, that panel examined problematical issues and stimulated long-range proactive initiatives. Complementing their efforts was the Committee for the Coordination of FBI/DEA Activities, generally referred to as the "Link-up Committee." The Link-up Committee explored more than 60 functional areas, many of them beyond the investigative arena. The committee made great strides in determining where increased integration and coordination could produce greater overall efficiency and economy. They examined areas ranging from records management, personnel administration, and automated data processing/telecommunications to criminal investigations.

By May 1985, tensions between agencies increasingly subsided. The adoption of the FBI's National Drug Strategy refocused FBI drug resources to targeting the highest strata of international and multijurisdictional drug organizations. Agents were rapidly redirected to address those groups posing the greatest threat to the United States. This effort to maximize the impact of the FBI's Drugs program served also to further reduce overlapping investigations between the FBI and DEA. The FBI's organizational investigative approach complemented, rather than conflicted with DEA's expansive drug mandate.

The FBI/DEA Joint Drug Plan, approved for implementation in January 1988, in six principal drug distribution cities, integrated to a certain extent DEA's role in pursuing the tenets of the FBI's NDS. Both the National Drug Strategy and Joint Drug Plan are intended to address the most influential Colombian/South American, Mexican and Chinese trafficking conspiracies through long-term, sustained investigations. Both the National Drug Strategy and the Joint Drug Plan are committed to employing those innovative and intensive investigative techniques, such as Title III electronic surveillance and long-term undercover operations, so necessary to dismantle secretive drug enterprises. This degree of cooperation between the agencies is an example of the improving coordination between DEA and FBI.

QUESTION: To what extent are the two agencies working cases separately versus working them jointly? What mechanisms exist that facilitate joint investigations where appropriate?

ANSWER: The contrasting strategies and missions of the FBI and DEA have resulted in relatively rare instances of overlapping investigations. When identified, both agencies work aggressively to avoid duplication of effort. The FBI/DEA program of exchanging DEA investigative forms at case initiation and other critical points in drug investigations is but one aspect of our efforts to eliminate duplication and overlap. In those cases where common subjects have been encountered, it is most often an instance where the FBI has been investigating the supplier of drugs and DEA has been investigating one of the drug supplier's distributors. Once this link in the chain has been discovered, either an FBI/DEA joint investigation is continued or one agency will defer to the other depending on the level of the organization penetrated. As discussed in a previous response, the FBI/DEA Joint Drug Plan integrates both organizations' objectives to assure coordination and effectiveness.

QUESTION: Many drug cases require intelligence from foreign countries and cooperation from foreign

governments. Does the fact that the FBI does not have a mandate outside the United States limit its effectiveness in pursuing large drug traffickers in foreign countries? Does DEA provide the FBI with information and assistance in foreign countries?

ANSWER: In foreign operations, the FBI and DEA have concurrent authority in drug investigations, subject to the oversight of the U.S. Ambassador to the host country. The "Implementation Directive for Concurrent Drug Investigation Jurisdiction Between DEA and the FBI" of 1982 serves to limit the authority of the FBI in foreign drug operations.

Section IV, Subsection L of the Directive governs the FBI's role in foreign drug operations and is reprinted below in relevant part:

> In keeping with the principle that the United States government should present a single point of contact with foreign drug enforcement counterparts, DEA will continue to be responsible for the conduct of drug investigations in foreign countries. This will include the investigation of leads generated in all types of FBI/DEA cases. In joint cases, the domestic DEA offices will transmit investigative leads following established procedures. An information copy of investigative matters involving FBI interests will also be simultaneously provided by DEA Country Attache for information. Any involvement of FBI personnel in foreign investigations must have the concurrence of both Headquarters.

Approximately 65 percent of all FBI drug investigations involve international drug conspiracies between foreign and domestic Colombian/South America, Mexican, Italian and Asian drug trafficking organizations. Recent examples of these types of cases involving international drug trafficking organizations include: Cashweb/Expressway, Pizza Connection, Cat-Com and the Sicilian Drug Connection cases.

The FBI currently operates 40 Racketeering Enterprise Investigations (REIs) addressing major Colombian/South American, Mexican and Italian drug trafficking enterprises, all of which have a foreign source country nexus. The REI Program is essential to the successful implementation of our National Drug Strategy (NDS). Curtailing FBI drug intelligence-gathering in foreign countries inhibits the progress of our REI program. It also limits the intelligence base of both DEA and the FBI by depriving DEA of the FBI's assistance and input.

Neither DEA Headquarters, nor its Country Attaches provide FBI Headquarters with detailed intelligence information from foreign drug source countries regarding Colombian/South American, Mexican, Italian, or Asian drug trafficking organizations. DEA Country Attaches handle specific investigative leads abroad for the FBI. The exclusivity of Section IV, Subsection L of the "Implementation Directive for Concurrent Drug Investigative Jurisdiction between DEA and the FBI" limits our investigative effectiveness in dismantling entire drug trafficking organizations. The FBI's Drugs program has greatly evolved since then and continued adherence to the explicit restrictions of that policy will severely curtail our future efforts in drug enforcement in many international arenas.

In April 1988, Director Sessions and Administrator Lawn conferred on modifying Subsection L. That meeting resulted in an agreement expanding the drug role of FBI Legal Attaches at Ottawa and Rome.

QUESTION: Within the United States, has the FBI achieved the same degree of cooperation with State and local law enforcement agencies for drug enforcement that DEA has? What has the FBI done to facilitate such cooperation?

ANSWER: One of the major objectives of the FBI's National Drug Strategy is the commitment to provide continuing assistance to other Federal, State and local law enforcement agencies in investigations of drug trafficking organizations operating in local or regional areas. The FBI shares responsibility with State and local law enforcement agencies to respond to local or regional drug problems that involve multijurisdictional conspiracies. It is the responsibility of each FBI field office to address local drug problems on a case-by-case basis with an appropriate assignment of agent personnel working with local police. The FBI continually provides legal and technical support to local authorities and routinely disseminates intelligence information. Over 20 percent of the FBI's investigative resources are dedicated to investigations of regional drug trafficking organizations.

Rather than increase the FBI's participation in regional investigations, the FBI emphasizes utilization of the particular expertise of State and local police officers to address an appropriate facet of investigations of international trafficking organizations. The Cashweb/ Expressway investigation typifies this approach. Officers of the Los Angeles Police Department (LAPD) and Los Angeles Sheriff's Office (LASO) provided exceptional surveillance assistance and developed probable cause to execute State search warrants on locations directly involved in an otherwise Federal investigation. The assistance of the LAPD and LASO enabled the Federal undercover operation to extend beyond the first stash house encountered and ultimately penetrate the highest strata of an international money-laundering organization.

Similarly, the FBI's New York Field Office has three of its four drug squads permanently staffed with New York

City Police Department (NYCPD) detectives. These continuing NYCPD task forces work in tandem with FBI agents in the investigation of top level, national and international drug trafficking organizations. This task force concept is limited to those areas and cities where the State and local police forces are large enough to divert a percentage of their resources from street enforcement to long-term, sustained investigations of NDS priority drug organizations. The FBI's Houston Field Office has used this concept extensively. Nearly every Houston Field Office drug case involves the participation of local police.

The FBI is also an active participant in the Department of Justice Organized Crime Drug Enforcement Task Forces program. The Organized Crime Drug Enforcement Task Force mission is to identify, investigate, and prosecute high-level members of drug trafficking enterprises, bringing together the combined expertise and unique abilities of Federal, State and local law enforcement. The FBI is strongly committed to this cooperative law enforcement effort in which law enforcement agencies on all levels work together on investigations and prosecutions. Approximately 25 percent of all pending FBI drug investigations are FBI-led OCDETF cases addressing significant drug trafficking organizations operating in local or regional areas.

Finally, the FBI is in the process of developing a training program in concert with the Bureau of Justice Assistance. This program would ultimately train 3,000 police officers in financial investigation methods and techniques. This training would emphasize drug asset tracing, seizure and forfeiture. The financial and professional incentives to State and local agencies have already enhanced the exceptional FBI State and local law enforcement relationships.

QUESTION: Is the total consolidation of the FBI and the DEA still being considered? What are the key pros and cons of such a merger?

ANSWER: Attorney General Edwin Meese III, stated in a Department of Justice press release, dated April 22, 1987, the following:

> I have concluded that at a time when we have made the battle against drug trafficking and abuse one of the Nation's priorities, it just makes good sense to retain the Drug Enforcement Administration, with a long, proud history of fighting this battle, as a separate and distinct agency. We will not, however, miss any opportunity to continue to make progress in putting joint operational, service and administrative functions in place that make the two organizations more efficient and that enhance their ability to work together effectively.

Drug trafficking has become an increasingly complex affair, involving money laundering, often on an international scale, and other related crimes in which the FBI has a great deal of expertise. We recognized this in 1982, when we expanded the Bureau's jurisdiction to include drug related crime. Today, the DEA and FBI are working together with great effectiveness in the battle against drugs and I have concluded that the current organizational structure, combined with increased joint activity, is the most effective pattern for the future.

Ranking of FBI Programs

QUESTION: According to page 100 of the justifications, the FBI ranks Executive Direction and Control and Administrative Services ahead of their law enforcement programs. This is not the first year that the Bureau's overhead is ranked over crime fighters out on the front-line, but what is the rationale for such ranking?

ANSWER: The FBI ranked its Executive Direction and Control and Administrative Services base programs ahead of its investigative base programs because these programs include the top echelon of leadership, management, direction, and administrative control of FBI operations. Investigative programs are led, managed, directed and administratively controlled at the highest level of decision making by executives organizationally structured within the Executive Direction and Control and Administrative Services programs.

In compliance with the Congressional requirement to provide a scale of comparison of base program importance, the FBI placed its programs of executive and administrative leadership at the very top because it is within these programs that the highest investigative decisions are generated. The ranking of base programs is consistent with the ranking used in previous Congressional justifications.

The second column of rankings involves the program increase requests for 1989. In the ranking of 1989 program increase requests, it is noted that the Executive Direction and Control program was ranked sixth in order of eight programs containing program enhancements. Four investigative programs, that is, the White-Collar Crime, Other Field, Drugs, and Organized Crime programs were all ranked ahead of the Executive Direction and Control program. In order for the FBI to fulfill its mission requirements for 1989, additional resources were requested for the aforementioned investigative programs, all of which, from a perspective of FBI expansion, were assigned higher priority than the Executive Direction and Control program. The Administrative Services program was not ranked in the program increases exhibit because that program does not include a request for increases for 1989.

QUESTIONS SUBMITTED BY SENATOR RUDMAN

Federal Bureau of Investigation

Funding for Drug Responsibilities

QUESTION: Since 1982, when the Federal Bureau of Investigation (FBI) received concurrent jurisdiction in drug investigations, what additional resources has the FBI received both in terms of agents and of budget authority?

ANSWER: In 1983 and 1984, the FBI operated under a reimbursable agreement for operation of the Organized Crime Drug Enforcement Task Forces (OCDETF).

In 1985, the FBI received direct funding for OCDETF investigations. The transfer in of OCDETF resources consisted of 334 agents and $37,186,000 in budget authority. The FBI also received an additional 26 agent workyears in OCDE and 38 agent workyears under the narcotics portion of the Organized Crime program. Total 1985 FBI funding for drug investigations was set at 360 agents for OCDETF and 38 agents for Organized Crime - drugs.

In 1986, no program enhancements were approved for either OCDETF or drug investigations under the Organized Crime program. Annualization of the workyears received as budgetary enhancements in 1985 gave funding to the FBI for two additional agents, bringing the total number of OCDETF agents to 362.

In 1987, an increase of 48 agent workyears was enacted by Congress and $4,855,000 in budget authority. Also, in 1987, 673 agents were reprogrammed from the field Organized Crime program to a newly created Drugs program.

In 1988, no program enhancements were approved.

In 1989, no additional agents are included in the request to Congress. The budget authority increase is $3,605,000.

Currently, the FBI has 1,119 agents and $102,315,000 as reprogrammed in 1988 dedicated to investigations of narcotics violations. Of this amount, a total of 410 agents and $44,468,000 were either appropriated directly to the FBI or transferred from the OCDE appropriation. However, the majority, 709 agents and $60,405,000, were reprogrammed from other FBI investigative programs.

Mexican Drug Traffickers

QUESTION: Your budget indicates that the FBI has identified 96 Mexican groups responsible for importation and distribution of brown and black tar heroin, cocaine, and marijuana; and over 250 Colombian/South American groups trafficking in cocaine. Yet you indicate the FBI has been unable to investigate more than 54 of the Mexican organizations and at any one time only addresses 40

result, DEA would be jointly investigating organizations identified by the FBI and vice versa.

In addition to the joint targeting mechanism ongoing in the Joint Drug Plan, the Prosecution Committee of the National Drug Policy Board has developed the National Narcotics Prosecution Strategy. The first strategy in the National Narcotics Prosecution Strategy is Priority Targets. The National Narcotics Prosecution Strategy, defines specially designated targets as the most significant national and international drug enterprises. The FBI is represented on the National Narcotics Prosecution Strategy Working Group which has the responsibility to develop targeting mechanisms. The FBI's organizational approach to drug investigations is ideally suited to this objective of the National Narcotics Prosecution Strategy. It is anticipated that a significant number of the Colombian/South American and Mexican organizations would be submitted for selection by the targeting group designated in the National Narcotics Prosecution Strategy, and that eventually other agencies would participate in investigations of FBI-identified organizations.

The Joint Drug Plan and the National Narcotics Prosecution Strategy targeting systems may lead to an erroneous conclusion that these programs would significantly reduce the backlog of uninvestigated drug-trafficking organizations and offset the personnel demands on the FBI. In fact, the converse may be true. The combined talents and expertise of multiple agency participation is expected to not only enhance collective intelligence bases but would also undoubtedly increase the potential number of organizations identified. In sum, the extent of organization drug trafficking activity is commensurate with the scope of this nation's drug abuse problem.

Artificial Intelligence

QUESTION: For 1989, the FBI is requesting $6.5 million to continue initiatives related to artificial intelligence and the use of expert systems. In what areas have artificial intelligence systems been developed? Have these expert systems proven to be an effective tool in investigations? What is the status of the expert systems prototyped in 1985 and 1986 for the analysis of drug intelligence?

ANSWER: Artificial intelligence (AI) systems are currently under development in the areas of organized crime/labor racketeering, counterterrorism, decision support, narcotics interdiction, and generic name search. Development of the counterintelligence expert system will be initiated in 1989.

The FBI has realized success with those expert systems which support the investigative mission areas of organized crime, narcotics, and counterterrorism. Expert systems have proven to be effective tools in investigations.

percent or 100 of the Colombian/South American organizations. Is the inability to fully investigate these organized crime groups involved in drug trafficking a result of insufficient funding? If so, what resources would be necessary to fully address the problem? Are there other Federal agencies which investigate drug trafficking groups identified by the FBI?

ANSWER: The FBI has been unable to adequately address a greater percentage of the identified drug trafficking organizations due to current agent and support positions and funding.

The FBI requires an additional 402 agent and 398 support positions to address the current number of identified drug trafficking organizations. Along with resources required directly to support field investigations, additional resources are required in the areas of forensic and technical personnel and equipment. The resources needed include two agent and 11 support positions for forensic examinations, one agent and four support positions for technical support, and 50 agent and 44 support positions to bring the requested personnel on board. Nonpersonnel items needed to support the enhanced drug effort include laboratory equipment ($47,000); closed circuit television equipment ($2,984,000); radio surveillance equipment ($790,000), and radio transmitters ($600,000). The FBI targets drug trafficking organizations, not individuals; an approach used successfully in organized crime cases. These investigations are long-term, employing resource-intensive techniques such as Title III Electronic Surveillance, undercover operations, and physical surveillance involving numerous FBI field offices.

The FBI anticipates that approximately 270 of the additional 402 agents would be dedicated to reducing the backlog of unaddressed Colombian/South American and Mexican drug trafficking organizations. This projection is, of course, based on the premise that additional organizations in these particularly virulent groups are not identified and that demands in other areas of the Drugs program remain constant.

In addition to an enhanced ability to conduct criminal drug investigations, these additional resources would also be used in seizure and forfeiture activity to deprive drug traffickers of the proceeds from their illegal activity.

The FBI and DEA developed a Joint Drug Plan in January 1988. The Joint Drug Plan commits the FBI's and the Drug Enforcement Administration's (DEA) most experienced agents in six of the collectively largest field offices to develop Joint Drug Plans to address the most powerful drug trafficking organizations in their respective areas. The six specially selected field offices are: Chicago, Houston, Los Angeles, Miami, New York, and San Diego. Targeted organizations are mutually selected using the combined intelligence bases of DEA and the FBI. As a

Specifically, a prototype of the organized crime/labor racketeering expert system is successfully supporting a major union corruption case in one of the top twelve field offices. The narcotics interdiction expert system, also known as Tiger Paw, was instrumental in the seizure of 13 tons of marijuana with the street value of over $10 million. A prototype of the counterterrorism expert system was deployed in April 1988, to support a major international terrorism investigation.

Furthermore, success has been achieved in the administrative areas of decision support and generic name search. A study has been completed which defines the requirements and decision criteria for handling crisis management through the FBI Strategic Information Operation Center. User acceptance testing of the personnel portion of the Decision Support expert system is ongoing, and the payroll portion of this system is scheduled to be completed in 1988. A prototype of the manpower resource allocation component of the Decision Support expert system is operational for special agent transfers and other special events. This system played an important role in the successful resolution of the Mariel Cuban uprisings in Federal correctional institutions in Georgia and Louisiana. Use of the Generic Name Search expert system has improved the quality and integrity of names in files and has expedited the searching capabilities of the existing data bases.

Tiger Paw was prototyped in 1985 and 1986 for the analysis of drug intelligence. This system is operational 24 hours a day with six Apollo workstations and provides access to four data bases, i.e., Treasury Enforcement Communications System, Narcotics and Dangerous Drugs Information System, Federal Aviation Administration Computer System, and the in-house computer system at the El Paso Intelligence Center (EPIC), from a single workstation using a single format for common queries. Additionally, a mapping system has been installed which provides the capability to track vehicles and vessels suspected of smuggling narcotics. The Tiger Paw system reduces the time required to process telephone inquiries and provides a faster and more consistent method of processing flight plan data. In 1989, Tiger Paw will be provided with additional workstations in support of the Special Operations, Analysis, and Watch Sections of EPIC and will provide support to general aviation interdiction, maritime smuggling/interdiction, and strategic analysis of drug information.

Effect of 1988 Continuing Resolution

QUESTION: The Budget Summit agreement reached between some Congressional negotiators and the White House put the Commerce, Justice, State, the Judiciary and Related Agencies in the position of having to take across-the-board cuts in order to meet the revised Subcommittee allocation for domestic discretionary programs. As a result, the Committee was faced with providing a level for

the FBI which was $12 million below its 1988 base level. What effect has this reduced appropriation had on the FBI during 1988? What would be the effect of limiting growth in the FBI's 1989 budget?

ANSWER: The final 1988 Budget Summit funding level for the FBI was $1,388,492,000 or $86,346,000 below the amended FBI request of $1,474,838,000, which included the disallowance of all program increases and base reductions totaling $10,571,000, excluding the effects of the restoration of the savings resulting from management initiatives of $2,000,000. The disallowance of program increases is expected to have a particularly severe impact on the FBI's investigative programs. In recent years, the FBI has assumed additional responsibilities in investigative areas. Without the required program increases, the added responsibilities are expected to overburden resources available to meet these challenges.

The requested increases for Other Field Programs of 89 special agent and 203 support positions were not allowed. The Organized Crime program, Organized Crime Drug Enforcement program, and White-Collar Crime program sustained a total disallowance of 160 special agent and 177 support positions.

A total of four special agent and 85 support positions was disallowed for the Technical Field Support and Equipment and Administrative Services programs. These positions were requested to support the Digital Voice Privacy initiative and to correct the imbalance of field investigative personnel to administrative personnel.

Because of a disallowed increase of $6,219,000 of the total increase for the Organized Crime program, aircraft operations as well as informant and Witness Security matters will suffer.

Because of the disallowance of a $13,000,000 enhancement, the FBI will not be able to proceed with the construction of the Engineering Research Facility (ERF). The ERF has been identified as an integral part of the FBI's overall response architecture for dealing with sensitive Other Field Programs matters, as well as the more sophisticated organized crime and drug trafficking organizations.

A base funding reduction of $1,232,000 in field technical equipment in support of criminal investigations will cause shortages in field radios, countermeasures equipment, recording and audio equipment, as well as special equipment for surveillance vehicles.

The base funding reduction of $3,078,000 in research and development for field technical equipment will limit the advancement of technical support to criminal investigations.

Finally, a base funding loss of $3,000,000 for vehicles would cause shortages in vehicles. Some investigative personnel would not have basic transportation available to conduct investigations in criminal and Other Field Programs. Special agents would have to wait for the return of vehicles from other users or double up in conducting work. For major investigations, large concentrations of FBI vehicles are needed on short notice. Field offices not having adequate numbers of vehicles are often times forced to use rental vehicles which are not properly equipped with voice privacy radios or other technical equipment needed to assist in the investigation.

Assuming the same funding level of $1,388,492,000 as that enacted in 1988, a no-growth budget in 1989 would seriously impact on the FBI's ability to execute its designated criminal investigative, security, and law enforcement assistance functions.

At this level, the FBI would be required to absorb $41,582,000 in uncontrollable operating cost increases that are anticipated for 1989. This includes $17,320,000 for pay increases authorized under Public Law 100-202; $4,460,000 for employee health benefits; $5,446,000 for increases in rent, postal rates, and telephone services; and $14,356,000 for general pricing level adjustments and other increases. The absorption of these costs within a static budget would necessitate the reallocation of funds from investigative, technical support, and State and local assistance programs.

The 1988 budget of $1,388,492,000 was a reduction below the current services level representing a base cut of $10.6 million excluding the effects of the $2 million savings resulting from management initiative restoration. A no-growth budget in 1989 would essentially be the same as if operating at close to the 1987 levels. In addition, the FBI is absorbing the entire cost of the 1988 pay raise this year. Like other Department of Justice (DOJ) components, unforeseen expenses growing out of the Mariel Cuban disturbances were experienced.

The requisite reductions would have a deleterious impact in all of these program areas. For example, further funding reductions may be necessary for automobiles. This would prevent the FBI from obtaining an adequate and reliable fleet of vehicles for use by field investigators. Reductions would also delay the replacement of vehicles which have exceeded General Services Administrative (GSA) lifecycle standards. Reductions in the area of technical support would not allow the FBI to obtain, repair, or replace critical, sophisticated field equipment such as pen registers, body recorders, and other communications and surveillance devices. This equipment is necessary to conduct complex investigations and obtain substantial evidence needed for prosecution. Other reductions in automated data processing and dissemination programs currently underway are designed to improve the FBI's operational efficiency and its responsiveness to the needs of special agents in the field as well as other Federal, State and local law enforcement agencies.

The program reductions necessary to cover uncontrollable operating cost increases of approximately $41.6 million would obviously have far-reaching effects. In addition, a no-growth budget would disallow the program enhancements of 532 positions and approximately $92 million that are essential if the FBI is to effectively address the growing and increasingly complex workload in high priority programs. Without the enhancements, it would be difficult for the FBI to fully address Organized Crime, Drugs, White-Collar Crime, and Other Field Programs matters in a timely manner.

A-76 Savings

QUESTION: Your 1989 budget reflects A-76 savings of 393 workyears. What programs will these positions be taken from and what impact will they have on your investigative programs?

ANSWER: The 1989 budget request for 1989 includes A-76 savings of 393 support positions and workyears (WYS), and $3,335,000. The allocation of these savings for the FBI is as follows:

A-76 Savings by Program	POS. & WYS	AMOUNT ($000)
Fingerprint Identification	129	$1,095
Training	19	161
Records Management	140	1,188
General Services Support - Admin. Services	31	263
Forensic Services - Federal	19	161
Automated Data Processing and Telecom.	41	348
Technical Field Support and Equipment	9	76
Criminal Justice Data and Statistics Services	5	43
TOTAL	393	3,335

Base-level reductions of 393 support positions and workyears, and $3,335,000 are planned in anticipation of savings as a result of A-76 program reviews being conducted by the FBI. The FBI is currently conducting three A-76 program reviews in an effort to determine if the functions in these three areas could be contracted to the private sector at a lower cost while maintaining at least the current level of efficiency and effectiveness. None of the positions under study are agent positions or are investigative in nature but include various support functions. These studies have not yet been completed; the decrease reflects an estimate of the savings that may actually be realized based on Federal Government experience to date.

National Drug Strategy

QUESTION: Your budget justification states that, in 1986, the FBI conducted a comprehensive review of the drug trafficking problem facing the United States and adopted a National Drug Strategy. Can you briefly outline the FBI's National Drug Strategy and tell us how it coordinates with the efforts of the Drug Enforcement Administration?

ANSWER: In May 1986, the FBI adopted the National Drug Strategy as the nucleus of its Drugs program, clearly defining the FBI's role in drug law enforcement. The National Drug Strategy established five major objectives focusing FBI drug investigative resources on those groups largely responsible for supplying illegal drug markets in the United States. The five major objectives, all of which were later incorporated in the National Drug Policy Board's "National and International Drug Law Enforcement Strategy," published in January 1987 include:

- conduct investigations directed against major cocaine and heroin drug trafficking organizations on a nationwide basis, seizing their illegal profits through forfeiture proceedings;
- expand and enhance the existing drug intelligence base;
- with the Drug Enforcement Administration (DEA), identify trends and make projections of organized drug trafficking activities on a national basis;
- concentrate resources in major centers of drug organizational activity; and
- provide assistance to other Federal, State, and local law enforcement agencies investigating drug trafficking organizations operating in a local or regional area.

FBI drug investigations are conducted on a long-term, sustained basis using electronic surveillance coverage and sophisticated undercover techniques to combat multijurisdictional drug trafficking organizations. Investigative efforts are focused on those groups posing the greatest threat: Colombian/South American, Mexican, Italian, and Asian drug traffickers, as well as major national outlaw motorcycle gangs and major regional drug trafficking organizations.

In August 1984, the Director established the Committee for the Coordination of FBI/DEA Activities (Link-Up Committee), to develop initiatives to avoid duplication, effect economy, and make the operations of the FBI and DEA more effective and efficient. Since that time, under the direction of the FBI Executive Assistant Director for Administration, and through subcommittees co-chaired by FBI and DEA executives, the Committee undertook 60 initiatives. They ranged in scope from feasibility studies to the actual integration of FBI and DEA components and activities, including areas of Administration and Budget, Congressional Liaison, Planning and Inspections, and Technology.

Other initiatives are in various stages of implementation. They are:

- the development of the FBI/DEA Joint Drug Plan in Chicago, Houston, Los Angeles, Miami, New York, and San Diego. Joint Drug Plans are viewed as important mechanisms for addressing major drug trafficking organizations in a given region using the combined talent and experience of both agencies;
- the formation of an FBI Drug Intelligence Unit at DEA Headquarters to more fully utilize DEA intelligence information to enhance FBI and DEA Joint Drug Plan investigations and, in the long run, to assist in identifying trends and making projects of organized drug trafficking on a national basis;
- development of tactical radio communications interoperability in the field to support investigative operations;
- collocation of training personnel and functions at the FBI Academy in Quantico, Virginia;
- cross-assignment and collocation of supervisory and intelligence personnel at the Headquarters' levels to increase program coordination;
- technical support of the El Paso Intelligence Center, to include the development and continued implementation of Project Tiger Paw; and
- collocation of engineering facilities, functions, and training.

The Joint Drug Plan is intended to combine the expertise of both agencies against major Colombian/South American, Mexican, and Chinese organizations. The Joint Drug Plan commits the FBI and DEA to joint intelligence-gathering initiatives in the field and at the Headquarters level. Studies are currently in progress to access the feasibility of developing an integrated intelligence data base.

Joint Drug Plan cases, by virtue of their scope and import, would likely be designated Organized Crime Drug Enforcement Task Force matters. That designation will facilitate the participation in those cases of still other Federal, State, and local agencies engaged in the war on drugs. Through this mechanism, Joint Drug Plan cases will benefit from the special expertise that the U.S. Customs Service, the Internal Revenue Service, and other Federal and regional law enforcement agencies. This might lead to dismantling of some drug organizations.

The FBI/DEA Joint Drug Plan is one of a number of bilateral initiatives; however, both agencies also conduct coordinated unilateral investigations targeting distinctly separate strata of drug problems. DEA's State and Local Task Forces program targets street drug enforcement in an effort to enhance local law enforcement drug investigative efforts. This one DEA initiative properly complements the FBI's upper strata organizational approach to drug investigations by "working up" the distribution chain. Both approaches often meet at mid-level local distributors, thus completing the circle and dismantling the total drug trafficking organization.

Criminal, Security and Other Investigations

QUESTION: For 1989, the FBI is requesting an increase of $10.7 million and 119 special agent positions for White-Collar Crime investigations, which your justification indicates reflects a strengthened emphasis on white-collar criminal activities, with agent time expended on investigations which have been designated priority matters.

What types of white-collar criminal investigations are determined to be priorities?

ANSWER: Several types of white-collar crime have high priority within the Department. These are crimes against the following: Federal, State, or local government by public officials and/or private individuals; businesses, consumers, investors, and employees; and the health and safety of the general public. The Attorney General's Economic Crime Council has specifically designated bank fraud and embezzlement investigations where the losses exceed $100,000 and Department of Defense procurement fraud as coequal number one priority white-collar crime matters.

In response to the designations of the DOJ, the FBI has established three major priorities within its White-Collar Crime program. They are: fraud against the Government involving U.S. Government officials (and/or losses exceeding $25,000) and bribery and other public corruption involving Federal officials; Federal, State, and local public corruption; and financial crimes.

The first investigative priority, governmental fraud, involves investigations which address bribery of public officials and the fraudulent use of Federal funds. These investigations attempt to identify and bring to prosecution those individuals and entities interfering with the lawful functioning of Federal agencies, programs, and projects. In addition to the corruption of Federal officials, governmental fraud investigations also deal with procurement, entitlement, false claim frauds, and environmental crimes. Procurement fraud includes kickbacks/bribes associated with contractors and subcontractors, product substitution, false test certifications, labor mischarging, and defective pricing. Entitlement fraud primarily consists of health care provider and mortgage/housing frauds. False claims run the gamut of charging the Federal Government for work that is not performed, using false billing rates, billing for services that were unnecessary, and creating completely fictitious invoices. Environmental crime involves the illegal storage, dumping, disposal, or dispersion of certain toxic substances into the environment.

The second investigative priority area is that of public corruption. These investigations involve systemic corruption by Federal, State, and local executive and management level public officials. Public corruption can be broadly defined as occurring when any elected or appointed public official acting for or on behalf of his/her office asks, demands, solicits, seeks, accepts, receives, or agrees to receive anything of value in return for being influenced in the performance of any official act.

Financial crimes, the third White-Collar Crime program priority, primarily involve frauds, thefts, and embezzlements occurring within or against the national and international financial community. Priority matters currently of particular concern, in concert with the Attorney General's Economic Crime Council priority designations, are bank failures or mergers in lieu of failures caused by fraud or embezzlement perpetrated by bank officers, owners, stockholders, other employees, and customers.

QUESTION: The budget document indicates that non-priority white-collar criminal matters are referred to local authorities or other Federal agencies for investigation, thereby permitting agents to address only the most complex, long-term, and personnel-intensive matters. Is there any indication that the white-collar criminal matters which are referred elsewhere are being fully investigated?

ANSWER: The referral of non-priority cases to other agencies is a measure of both economy and efficiency. Resource restrictions necessitate that some cases be referred to other agencies. The referral of lower priority, less complex matters allows the FBI to concentrate its specialized and limited resources and expertise on those cases which it can address more effectively and efficiently than other agencies.

The FBI does not generally follow up on any matter that has been referred to another agency to determine the status of the investigation. The FBI does, however, reassess any matter that is referred back from an agency if investigative assistance is requested.

DRUG ENFORCEMENT ADMINISTRATION

STATEMENT OF JOHN C. LAWN, ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION

NEED FOR CHEMICAL AND PRECURSOR LEGISLATION

Senator HOLLINGS. Mr. Lawn, what can we do for you?

Mr. LAWN. Mr. Chairman, in addition to supporting our budget request, we very desperately need the chemical and precursor legislation that is currently on the Hill.

As the Attorney General mentioned this morning, we recently visited five major countries in South America. This trip was very disquieting as it has been in the past. When we ask the source countries to do more, they remind us that the chemicals used in the processing of coca into cocaine hydrochloride, the white powder, are chemicals manufactured in the United States.

This legislation is critically important for our arsenal. It is very difficult for us to respond to the presidents of these countries when they ask when the United States is going to do something about the chemicals which are being used in coca processing?

Senator CHILES. Where is that legislation?

Mr. LAWN. The legislation is here, sir.

Senator HOLLINGS. In Judiciary.

Mr. LAWN. Yes. This legislation is critically important because even if we miraculously were able to stop the importation of cocaine, heroin and marijuana, there are still enough illicit drugs manufactured here in the United States to fully handle our addict population.

We are a source country. The chemicals used to create those drugs are manufactured here in the United States. This legislation will help us to address that major problem.

Senator HOLLINGS. Very good. I would hope a little bit more experienced approach in dealing with the Latin countries can be employed.

I will never forget, under President Carter, 10 years ago, when Mrs. Carter was going down, she even took Spanish lessons, and made a wonderful impression. This committee, to assist her and get into the drug program, 10 years ago, provided helicopters and radio equipment.

It was, in essence, turned over to those who were in the drug business. We thought that we were arresting and stopping, but actually we were enhancing. This was 10 years ago, so you are dealing with a tough crowd.

[The prepared statement of Mr. Lawn, and the submitted questions for the record follow:]

PREPARED STATEMENT OF JOHN C. LAWN

ADMINISTRATOR

DRUG ENFORCEMENT ADMINISTRATION

Mr. Chairman and members of the committee, it is my privilege to discuss with you today the Drug Enforcement Administration's budget request for fiscal year 1989.

I do not need to describe to you the urgency of the drug problem in the United States today. As public reports have recently highlighted, the problems of drug trafficking and abuse have reached global proportions and have touched virtually every community: urban, suburban, and rural. Whereas a decade ago, drug trafficking and drug abuse were thought to be confined to relatively small sectors of the population, it should now be clear that drug use and drug-related criminal activity have reached unacceptable levels domestically and threatens international security.

The magnitude of this crisis has fueled our current commitment to reducing the supply of, and the demand for, illicit drugs. We now see the anti-drug message spread from coast to coast, and even into the international arena. For our efforts to succeed, this commitment--shared by the Congress, the President, and States and localities across the United States--requires resources, sustained effort, strong determination in both supply and demand reduction activities.

DEA's key role in this national effort is reflected in the President's budget request currently before the Congress. DEA has established a long-term program to enhance and modernize virtually every aspect of agency operations.

DEA's investigative efforts have resulted in dramatic increases in arrests, drug seizures, and asset seizures and forfeitures. DEA arrests reached 21,732 in 1987--a 64 percent increase over 1981-- while DEA arrests of major violators increased 200 percent. Cocaine removals increased 1,822 percent and heroin removals increased 70 percent during this period. Clandestine laboratory seizures increased from 184 in 1981 to 682 in 1987, a 270 percent increase. And finally, DEA's heightened focus on financial investigations resulted in asset seizures in 1987 valued in excess of $500 million.

DEA's 1989 budget request continues DEA's long-standing strategy to significantly enhance its technological capabilities by concentrating on logistical support, intelligence systems, and investigative equipment. These resources will provide DEA with the tools to continue and improve the efficiency, productivity, and safety of DEA's workforce.

In 1989, DEA is requesting 5,887 positions (of which 2,935 are special agents), 5,657 full-time equivalent (FTE) workyears, and $538.1 million in order to carry out its drug enforcement responsibilities. This represents a net increase of 177 positions (60 special agents), 78 FTE workyears, and $44.0 million over the 1988 appropriation enacted in December 1987.

DEA's enhancement requests fall into four major funding initiatives, derived from our 1989 strategic plan. These initiatives are as follows.

The first is to Modernize DEA's Air Wing and Technical Support Program. DEA requests 47 positions and $19.1 million to enhance DEA's air program to a level that will meet both foreign and domestic commitments during 1989, and to increase radio support throughout the 19 domestic divisions.

As part of this initiative, DEA is requesting funds for 2 fully equipped turbo aircraft for foreign operations; 9 single engine replacement aircraft for DEA's domestic fleet; 2 twin engine helicopters; 20 Special Agent pilots, 2 support positions; 25 radio technicians for domestic field offices; and enhanced computer capabilities at the Airwing in Addison, Texas.

The foreign aircraft increase will support DEA's mission in South and Central America, as we focus on assistance to Latin American countries eliminating the supply of drugs at the source through coca eradication and destroying clandestine laboratories. The domestic aircraft will replace non-serviceable and obsolete airplanes and helicopters that can no longer safely fulfill DEA's mission requirements.

The second initiative is to Complete the Conversion of DEA's Information Systems and the Enhancement of the El Paso Intelligence Center (EPIC). DEA requests 12 positions and $1.6 million to standardize all of DEA's information systems, and 64 positions (19 special agents) to expand the El Paso Intelligence Center into a tactical all source intelligence center. The enhancements requested in this budget will expand EPIC so that it can provide more actionable, tactical intelligence to law enforcement agencies throughout the country.

As you recall, the Anti-Drug Abuse Act of 1986 provided for $7.5 million to move the El Paso Intelligence Center from its current location in El Paso to Fort Bliss. I am pleased to report to you that the construction of EPIC's new building is proceeding on schedule, and that it should be ready for occupancy during the fall of 1988. I am also pleased to inform you that the new building will be named the Camarena Building in honor of Special Agent Enrique Camarena, who was killed in the line of duty in February 1985.

The third initiative is to Immobilize Major Drug Traffickers and their Trafficking Organizations by Concentrating Resources on Asset Removal Teams and Financial Intelligence. DEA requests 44 positions and $1.7 million to establish Asset Removal Teams in DEA field divisions, to provide legal support to DEA's asset removal activities, to enhance the financial intelligence operation, and to improve DEA's seizure/forfeiture ratio.

This initiative contains 25 positions (16 Special Agents) to create Asset Removal Teams in 4 domestic Field Divisions; 6 Intelligence Analysts to support DEA's Financial Intelligence Program; and 13 positions to provide legal and administrative support for DEA's Asset Removal Program.

Asset forfeiture provisions, expanded and improved in both the Comprehensive Crime Control Act of 1984 and the Anti-Drug Abuse Act of 1986, are among our greatest drug law enforcement tools. Asset forfeiture allows the Federal government to take the ill-gotten gains of drug traffickers and drug trafficking networks, destroying their economic power structures, and to turn those resources against the drug trafficker through funding enforcement activities.

DEA's Asset Removal Teams allow DEA to fully exploit these asset forfeiture laws. Experience with the current Asset Removal Teams demonstrates that they will contribute considerably to DEA's asset seizure and forfeiture potential--those offices with Asset Removal Teams in place during 1987 significantly increased their performance by seizing 65 percent more assets than during the previous year.

The fourth initiative is to Strengthen Field and Headquarters Administrative Infrastructure by Enhancing Support Staff and Equipment in Technical Areas. DEA requests 31 positions and $4.1 million to provide additional staffing strength to administrative areas whose workload has increased in response to the requirements of DEA's enhanced investigative capabilities.

This final initiative includes 5 positions to respond to Department of Justice audit requirements; 5 positions in support of DEA's responsibilities for interagency drug statistics; 4 chemists to respond to increasing laboratory workload; and 17 positions in support of increased workload requirements for DEA's accounting, personnel, and general services programs.

The resources in this request will lead to more drug enforcement statistical accomplishments. But DEA's accomplishments must not be measured in terms of statistics alone. Under the guidance of the National Drug Policy Board, we have expanded our interagency cooperative efforts at the policy and operational levels. We have joined with our counterparts in other agencies in developing national and international drug strategies.

DEA's extensive participation in the Organized Crime Drug Enforcement Task Force program, and its leadership in the DEA State and Local Task Force program and the Domestic Cannabis Eradication/Suppression program, among other ventures, all serve to enhance the interagency cooperative spirit and thereby enforcement effectiveness.

In the international arena, DEA has significantly enhanced its supply side efforts by embarking on a coordinated effort to disrupt the production and transshipment of illicit substances. This effort in Latin America complements other international enforcement efforts such as Operation BAT in the Caribbean, part of the United States-Bahamas Drug Task Force created by the Anti-Drug Abuse Act of 1986.

In addition to international cooperative enforcement operations, DEA encourages and supports other multilateral activities that foster international drug control. DEA participated in the Unite Nations International Conference on Drug Abuse and Illicit Trafficking in Vienna in June of 1987. DEA also continues its active participation and leadership in the International Drug Enforcement Conference (IDEC), formed in 1983 to facilitate the cooperation and communication among the Latin American countries and the United States. The fifth IDEC meeting was held in March 1987, in Brasilia, Brazil. Several weeks ago, the sixth IDEC conference was held in Guatemala City, Guatemala. About 95 officials from 18 IDEC member countries, four observer countries, and INTERPOL participated in the meeting. This year's meeting focused on enhanced and coordinated police action in the region, law enforcement's role in demand reduction, and legal processes and legislative reforms.

DEA's success in this nation's War on Drugs speaks for itself; however, the continued escalation of drug trafficking an drug abuse underscores our belief that enforcement is only one part--albeit an essential part--of a multi-faceted drug strategy.

I have said here and in other fora since becoming DEA Administrator that education and prevention plays a primary role in the anti-drug effort. I have recently expanded DEA's contributions to this activity by placing demand reduction coordinators in each of DEA's 19 field divisions. These coordinators ensure that the anti-drug message reaches target audiences in every corner of the nation. We continue to stress not only the demonstrated health-related dangers of drug use, but also that drug use feeds powerful criminal networks here and abroad. Every time a person--be that person white or minority, urban or suburban, male or female, young or old, affluent or poor--buys illegal drugs, the blood of slain Special Agents, policy officers, Colombian officials, and our nation's children killed in drug-related violence is on his or her hands. This message must continue to be told. The tragic deaths of DEA Special Agents Paul Seema and George Montoya, shot in Los Angeles on February 5, 1988, and the drug-related deaths of thousands of people across the United States demand that the message continue to be told.

But the nation's law enforcement efforts must continue right along with our education, prevention, and treatment initiatives.

Our agents, trained along with those of the FBI in Quantico, Virginia, represent highly motivated and highly skilled cadre of dedicated professionals. These agents risk their lives, and sometimes lose them, in the daily fight against drug trafficking and abuse.

I also remember a time when the number of Capitol Police exceeded the number of DEA Special Agents. With your help, that situation has changed. With the requested increases in 1989, the strength of DEA's investigative workforce will have grown from 1,940 Special Agent funded positions in 1982 to 2,935 in 1989--a 51 percent increase. Direct appropriations will have increased from $216.2 million in 1981 to $538.1 million in 1989--a 149 percent increase.

If enacted in 1989, DEA's budget will represent about 15 percent of the Federal government's drug-related expenditures. Given the substantial return on this rather meager investment, I know that this is money well spent.

QUESTIONS SUBMITTED BY MR. HOLLINGS

Drug Enforcement Administration

1989 Budget Requests

Question: The 1989 budget requests $538 million for the Drug Enforcement Administration. Is any of this $44 million or 8.9 percent increase over 1988 allocated to "demand reduction" efforts?

Answer: Not at this time. DEA is currently utilizing base resources for this program; however, a reallocation is planned for 1988 which will add an additional $1.6 million and 21 positions for the demand reduction program.

Progress Fighting Drugs

Question: Drug seizures have been up dramatically in the past few years. Yet, according to a recent University of Michigan study of high school graduates, marijuana -- and more recently, cocaine use -- has been on the decline. Does this represent any real progress in the war on drugs, or are increased drug seizures just a reflection of the growing magnitude of the problem?

Answer: The decrease in drug use by high school seniors indicates an increased awareness on the part of the students that drug use will have a detrimental effect on them. This in itself is substantial progress, especially when compared to the prevailing attitudes of the 1970'S. However, we must not lose sight of those students who have already dropped out because of drug use and were not captured by the survey. The increase in drug seizures reflects increased effectiveness and a growing cooperation among law enforcement agencies worldwide as well as an increase of intelligence utilization to immobilize traffickers.

Question: If we are making progress fighting drugs-- especially on the supply-side -- why, according to GAO's recent Status Report on Drugs, has the price been going down while the potency of drugs has been increasing?

Answer: The price of cocaine has been decreasing during the past years because overall, demand remains high, especially among the disadvantaged socio-economic groups in our society. However, increased enforcement efforts have been directed toward source country production and eradication, as well as toward precursor chemicals required to produce the cocaine hydrochloride at the source. The amount of overall cocaine production has been high in the past years and it will take time to deplete the supply in the pipeline, in transport and in the hands of domestic distributors. It will also take time to effect the behavioral change necessary to permanently reduce the demand.

"Operation Pipeline"

Question: In an effort to intercept shipments of narcotics along the nation's major highways, the DEA has been working closely with State police -- teaching them critical interdiction strategies.

Last year, the South Carolina highway patrol participated in this training for the first time. Just a few days after completion of the course, Trooper Connelly from Sumter County was working I-95. He stopped a car for a traffic violation and ended up seizing ten ounces of heroin. Working in cooperation with the DEA, the State police permitted the "drug courier" to continue on his route to Massachusetts. At the point of delivery, four arrests were made, including a major Jamaican trafficker and murder suspect. How can we expand further on this approach--utilizing DEA's expertise with State and local implementation to broaden the scope of our interdiction efforts? Does the DEA use this approach in other initiatives?

Answer: DEA recognizes the value of forming close alliances with State and local agencies in the fight against drug trafficking. DEA continually works with State and local agencies, providing them training in drug enforcement techniques as well as working with them on investigations.

Last year, DEA trained over 13,000 State and local officers in a variety of courses. For State and local officers, DEA conducted 65 two-week basic investigation classes, 10 one-week advanced drug enforcement training classes, 125 three-day seminars, 73 one-day seminars, and 13 one-week cannabis detection and eradication schools.

DEA's State and Local Task Force program facilitates maximum drug enforcement coordination from State and local governments, generates intelligence, and develops leads for other cases. The benefits of the Task Force program are reciprocal: State and local enforcement agencies provide special equipment and conveyances when needed for DEA undercover operations; the Task Forces contribute substantial intelligence to DEA's data bases; and cooperation with local banks and other local entities is improved.

DEA currently has 43-program funded Task Forces and 11 provisional Task Forces. Approximately 500 State and local police officers and 225 DEA agents participate. DEA will continue to develop training programs, like Operation PIPELINE, that serve to enhance the nation's firm commitment to the State and Local Task Force program.

DEA's Air Wing

Question: In the budget submission, the DEA is requesting 147 positions and $19,079,000 to modernize its Air Wing

and Technical Support Program. Of that amount, about $14.6 million is designated for nine single-engine aircraft, two twin-engine helicopters, two turbo aircraft and related equipment -- bringing the DEA's air wing to a total of 94. Presumably, the requested aircraft and equipment will be new acquisitions from aircraft manufacturers. Has the DEA given consideration to less costly alternatives to purchasing new aircraft and equipment and equipment such as borrowing current or acquiring surplus aircraft and equipment from the Department of Defense?

Answer: Of the aircraft requested in 1989, 11 are for replacement; only 2 new turbo aircraft are requested to increase the fleet size. This will bring the total size of the fleet to 83. DEA has considered other options to purchase. Since leasing is too expensive, we do acquire surplus aircraft from the Department of Defense.

Question: How long has DEA been using single-engine helicopters? Why is it now necessary to convert to twin-engine helicopters?

Answer: DEA has used single-engine aircraft since 1975 but is converting to twin-engine aircraft for safety reasons. This is particularly important for flying in high-population density areas (e.g., New York City) and mountainous areas (e.g., Hawaii and Colorado).

Immobilizing Major Drug Traffickers

Question: In the budget submission, the DEA is requesting 44 positions and $1,682,000 to immobilize major drug traffickers and their trafficking organizations by concentrating resources on asset removal teams and financial intelligence. How many asset removal teams will be established and in what cities?

Answer: DEA has already established asset removal teams in the following 13 cities:

San Diego
Miami
Chicago
New York
Houston
Washington
San Francisco
Dallas
Detroit
Philadelphia
Phoenix
Seattle
Los Angeles

Four new teams will be created with the resources requested in 1989; however, the exact locations have not been determined. Potential locations include Atlanta, Boston, Newark, St. Louis, Denver and New Orleans. A possibility also exists that an existing team may be enlarged due to successes in a particular area.

Question: Can asset removal teams be expanded to other locations?

Answer: The existing teams have shown an average increase in asset seizures of 65 percent; therefore, DEA plans to eventually establish teams in all 19 divisions. Four new teams can be created with the resources requested in 1989; however, the exact locations have not yet been determined.

Question: Besides the United States, do any other countries use asset seizure and forfeiture as an enforcement tool against major drug traffickers?

Answer: Various countries throughout the world have enacted asset forfeiture legislation in some form, however, many have not. Of those that have adopted such legislation, virtually all require a criminal conviction before forfeiture can occur, and there is little or no uniformity, due in large part to the differing judicial systems. In any event, none are as expansive or comprehensive as those which we have in the U.S. DEA has been working with many foreign governments in an attempt to get them to expand their laws to be as complete as those in this country.

El Paso Intelligence Center (EPIC)

Question: The National Drug Policy Board has designated EPIC as the nation's tactical drug interdiction intelligence center. It provides the law enforcement, military, and intelligence communities with tactical intelligence pertaining to the interdiction of drugs, weapons and aliens. You are requesting 64 positions and $7.3 million to enhance intelligence capabilities at EPIC. At what type of intelligence effort is the enhancement targeted?

Answer: Most of the enhancement, eighty percent, is aimed at improving EPIC's intelligence collection and analysis of raw data. The efforts will concentrate on aviation, maritime, and land smuggling activities to improve EPIC's capacity to support enforcement and interdiction operations.

Question: It appears from your submission that EPIC is at the breaking point because its workload is overwhelming the staff. You also state that EPIC is curtailing certain activities so it can respond to the incoming requests for information. If workload continues to increase and additional resources are not provided, what will be the effect on DEA's ability to develop intelligence, and how will other agencies get the intelligence data they need to carry out their missions?

Answer: EPIC's transactions have increased by more than 100 percent over the last five years while total staffing has increased by only 13 percent. In fact, DEA has not received an appropriated staffing increase for EPIC since 1977. Our first priority is to respond to inquiries and maintain the data base, therefore, EPIC has had to devote more resources to these activities and less to intelligence collection and analysis. Although vast amounts of information are at our fingertips, EPIC's resources are inadequate to exploit the data. So while we are responding to all requests, we may not be responding as quickly, using information which is as comprehensive, or developing as much predictive intelligence as we are capable of doing.

Question: **I understand that some of the participating agencies have criticized EPIC for not giving timely responses to information requests and have generated proposals to establish centers similar to EPIC on their own. What is the danger associated with other agencies establishing their own versions of EPIC?**

Answer: If EPIC is unable to respond to the tactical intelligence needs of the participating agencies, these agencies may be inclined to develop their own information capabilities. This would be totally unwarranted. EPIC already has the infrastructure to respond to this calling but simply lacks the resources required to keep up with demand. A proliferation of intelligence centers would not only be much more costly than an enhancement of EPIC, but also it would encourage more segregation and less cooperation and intelligence sharing.

Finally, the Administration's decision to fund EPIC was accompanied by a firm policy decision designating EPIC as the lead drug interdiction intelligence facility, and would preclude the development of additional intelligence centers. The decision requires providing EPIC with the resources to fully respond to the intelligence requirements of its member agencies.

Question: **All 50 States participate in EPIC for intelligence sharing. How is the EPIC staffing shortage affecting State and local enforcement efforts?**

Answer: EPIC's analysis section publishes reports on issues such as methods of concealment, drug convoy routes, and other trend-oriented special reports which are principally aimed at State and local agencies. In some cases, this is the only source of formal intelligence available to the agency. Workload has forced EPIC to drastically reduce the number of reports produced; a trend that will have to continue unless additional resources are provided.

Drug Trafficking Across our Borders

Question: **There has been much discussion about spending sizeable amounts of money to seal our borders as a means of reducing our nation's growing drug problem. From the DEA perspective, is sealing off our borders an effective strategy for dealing with our drug problem?**

Answer: No. The sheer length of the U.S. land borders would make this impossible. Even if it could be done, it would not stop the drug problem. Interdiction efforts do not take into consideration clandestine laboratories, domestic cultivation, or diversion of legal drugs.

Question: Would it be more effective to spend money on additional agents and better drug intelligence?

Answer: Yes. DEA is placing major emphasis on stopping the flow of drugs from the source. Our initiatives include laboratory suppression activities, highway interdiction programs, riverine interdiction programs and chemical tracking and interdiction programs.

Internal Investigations

Question: In 1987, the budget requested two positions for internal investigators who were responsible for processing cases of agent wrongdoing, particularly agent corruption through increased drug trafficking. Are you requesting additional personnel for internal investigations?

Answer: No.

Question: Has your caseload in this regard increased?

Answer: Yes. Because of the significant increases to the workforce in recent years, 75 percent of DEA's non-supervisory field agents have under 5 years experience; and inexperienced supervisors now lead many enforcement groups. This has have led to a host of problems. Principally, additional reviews are required for administrative mishandling of evidence, miscounting of cash, increased shootings, etc. However, there has been no noticeable increase in the percentage of integrity investigations.

Organized Crime Strike Forces

Question: DEA participates in the Justice Department's Organized Crime Strike Force program. DEA also plays a key role in the Organized Crime Drug Enforcement Task Force (OCDETF) program. By definition, both programs involve investigations of organized crime. Since both the OC Strike Forces and OCDETF involve organized crime investigations and prosecutions, and since drug trafficking is a major activity of organized crime, does it make sense to have both programs?

Answer: Organized Crime Strike Forces are prosecution teams that have expertise in the prosecution of traditional and Sicilian organized crime families. The OCDETF program is a major cooperative Federal program for investigation and prosecution of members of high-level drug trafficking organizations. OCDETF-targeted organizations include not only traditional organized crime, but other organizations that import, manufacture, or distribute illicit drugs. From DEA's perspective, there is no overlap and confusion regarding the functions of the Strike Forces and the OCDETF program. Drug cases become OCDETF cases when they meet certain criteria. Cases, including those involving drug charges as well as others, may be prosecuted by Strike Force attorneys when they involve traditional or Sicilian organized crime.

Question: How does DEA determine whether to utilize the Strike Forces or OCDETF for a particular case?

Answer: When a DEA case involves traditional or Sicilian organized crime, the Strike Force usually prosecutes the case. Cases involving high-level drug trafficking organizations and meeting certain criteria are designated OCDETF cases, and involve OCDE investigators and prosecutors.

Question: Which program does DEA work with most often?

Answer: DEA is part of the OCDETF program, therefore, DEA is always involved with investigating and prosecuting cases that have been designated as part of the program.

When a case involved the Strike Force, however, DEA works with the Strike Force attorney in prosecuting the case.

Question: In DEA's view, is one program more effective than the other?

Answer: From DEA's perspective, both programs effectively confront the problem of drug trafficking by organized criminal groups.

QUESTIONS SUBMITTED BY MR. RUDMAN

Drug Enforcement Administration

DEA Latin American Initiative

Question: It is my understanding that DEA is undertaking a new operation in cocaine-source countries in Latin America, involving approximately 150 agents who will work with their foreign counterparts providing training in drug suppression techniques such as clandestine laboratory identification and destruction, as well as operational and logistical support. Can you describe this operation in further detail, including any information you might have on how you will measure the success of this operation?

Answer: This strategy, which capitalizes on lessons learned from Operation BLAST FURNACE in Bolivia in the summer of 1986, was developed by and involves several Federal agencies, including DEA, the Bureau of International Narcotics Matters at the Department of State, the Border Patrol of the Immigration and Naturalization Service, and the Coast Guard. The primary focus is to eliminate the production of coca and manufacture of coca products in South America. The strategy is continually being refined because of local political and other considerations. Currently, we are operating primarily in Bolivia and Peru.

The initiative includes lab suppression activities, highway interdiction programs, riverine interdiction programs, and chemical tracking and interdiction programs. DEA provides assistance, training, and operational and logistical support to its foreign counterparts.

A summary of accomplishments from April 1987 through March 1988 includes:

- 80 agents have been fully trained for temporary duty in Latin America as of April 1, 1988.
- 60 cocaine hydrochloride (HCL) laboratories have been destroyed, along with hundreds of cocaine paste and base labs. DEA directly participated in a supporting role in these operations.
- Over 21,000 kilos of cocaine HCL have been seized.
- Over 40,000 kilos of coca paste, capable of producing 16 metric tons of cocaine, have been seized.
- Over 13,000 kilos of cocaine base, capable of producing 13 metric tons of cocaine, have been seized.
- Over 180,000 gallons of precursor chemicals, capable of producing nearly 40 metric tons of cocaine, have been seized.

- o Seizures include 52 aircraft, 31 boats, 518 vehicles, and $3.6 million in currency; all surrendered to the Latin American governments involved.
- o Equally important are the intelligence contributions and level of disruption we are causing traffickers.

Measures of success for the program will include:

- o Intelligence information suggesting a reduction in cocaine availability.
- o Increase in the price of cocaine.
- o Decrease in cocaine purity.
- o Decrease in cocaine-related deaths.
- o Decrease in cocaine-related emergency room mentions.

Question: What resources have been committed to this new operation during 1988 and what resources are being requested for 1989?

Answer: In 1988, DEA expects to spend about $10 million on operational expenses for this operation. This includes $6 million set aside for this Special Enforcement Operation (SEO) in the Domestic Enforcement account for operating funds and funds for the purchase of evidence and information, $1 million in expected training expenses, and $3 million for technical equipment. Agent salaries are not included in the $10 million figure.

The 1989 budget request contains an additional $10 million for aircraft and related equipment that will support the enforcement operations that are part of this initiative.

DEA is requesting two turbo prop aircraft, which will be retrofitted with equipment necessary for operations in the South American jungle environment. DEA is also requesting two Forward Looking Infrared Radar devices and 10 navigational upgrades that will assist in spotting clandestine laboratories and air strips, and navigating DEA aircraft.

Question: Is the Bureau of International Narcotics Matters in the State Department providing funding for this effort?

Answer: The Department of Defense and the Department of State are involved in operational planning. All appropriate and available resources from both agencies are being tapped for use in the Latin American initiative.

Question: What priority does this operation have with respect to DEA's overall operations?

Answer: This initiative is one of DEA's highest enforcement priorities.

El Paso Intelligence Center (EPIC) -- DEA

Question: EPIC was established in 1974 by DEA and INS for the collection and dissemination of intelligence to assist enforcement and interdiction agencies in halting the flow of illegal drugs and aliens from Mexico. The 1987 Continuing Resolution provided $7.5 million to upgrade the El Paso Intelligence Center to an all-source intelligence center. For 1989, DEA is requesting 64 positions and $7.3 million to enhance intelligence capabilities at EPIC. What type of intelligence effort is the enhancement targeted at?

Answer: Most of the enhancement, eighty percent, is aimed at improving EPIC's intelligence collection and analysis of raw data. These efforts will concentrate on aviation, maritime, and land smuggling activities to improve EPIC's capacity to support enforcement and interdiction operations.

Question: It appears from your budget submission that EPIC is at the breaking point because its workload is overwhelming the staff. Your budget submission also indicates that EPIC is curtailing certain activities so it can respond to the incoming requests for information. Will the additional $7.3 million requested in 1989 permit DEA to provide the intelligence needed by other law enforcement agencies in carrying out their missions?

Answer: Yes. EPIC's transactions have increased by more than 100 percent over the last five years while total staffing has increased by only 13 percent. In fact, DEA has not received an appropriated staffing increase for EPIC since 1977. Because of this situation EPIC has been forced to divert resources away from intelligence analysis and dissemination to respond to the incoming information queries. The $7.3 million requested will provide the personnel and equipment necessary to respond to the full range of intelligence requested of EPIC, including transaction responses, special intelligence collection, intelligence analysis and exploitation, and dissemination of finished intelligence products to EPIC participants.

Question: It is my understanding that EPIC has been criticized by participating law enforcement agencies for not giving timely responses to information requests. This has resulted in proposals being generated to establish other centers similar to EPIC. Should individual law enforcement agencies be permitted to establish their own intelligence centers?

Answer: If EPIC is unable to respond to the tactical intelligence needs of the participating agencies, these agencies may feel it necessary to develop the information themselves. This is totally unwarranted. EPIC already has the infrastructure to respond to this calling, but simply lacks the resources required to keep up with demand. A proliferation of intelligence centers would not only be much more costly than an enhancement of EPIC, but would also encourage more segregation and less cooperation and intelligence sharing.

Finally, the Administration's decision to fund EPIC was accompanied by a firm policy decision designating EPIC as the lead drug interdiction intelligence facility, and would preclude the development of additional intelligence centers. The decision requires providing EPIC with the resources to fully respond to the intelligence requirements of its member agencies.

DEA State and Local Task Force Program

Question: Your budget justification describes the State and Local Task Force Program as one of DEA's most successful programs. You indicate that while DEA as a whole seized assets worth slightly more than 100 percent of its total budget, the task force programs' seizures doubled the budget authority provided for this component. Your 1989 budget requests no additional resources for State and Local Task Forces. Why?

Answer: The Task Force program is clearly successful and remains a high priority for DEA. However, given the economic conditions which led to the Budget Summit Agreement, not all of DEA's budget priorities could be funded in our 1989 request. As a result, the 1989 budget includes only the highest priority items and is focused on enhancing foreign suppression activities and improving technological and investigative support to improve the effectiveness of all DEA programs.

Question: It is my understanding that prior to establishing a full State and Local Task Force, DEA will establish provisional task forces in certain areas for approximately an 18-month period to determine the need for such a Task Force. How many provisional task forces does DEA anticipate supporting during 1989?

Answer: There are currently 11 task forces in the provisional program and 43 funded by the State and Local program. Program guidelines limit the number of provisional task forces to 25 percent of the total number of task forces; therefore, the maximum allowable number of provisional task forces is approximately 14. No enhancements were provided for this program in 1988 and none are anticipated for 1989; consequently, DEA will support 11 to 14 provisional task forces in 1989.

Question: Are there currently provisional task forces which are eligible to become regular task forces which will not be continued as a result of inadequate resources in this area?

Answer: Yes. One provisional task force will reach maturity during this fiscal year. Because its performance has been commensurate with others in the program, attempts are being made to internally redirect resources to continue the task force. Two other task forces face a similar situation in 1989.

DEA Foreign Cooperative Investigations

Question: DEA has requested base level funding of $59 million for its foreign cooperative investigations activity in 1989. Yet, your budget justification indicates that you plan continued expansion of DEA's overseas presence in 1989 and 1990, with new offices anticipated in Canada, Portugal, Kenya, Western Africa, and the Eastern Carribean. Do you anticipate actually opening new overseas offices during 1989? If so, how will you accomplish this when no additional funds have been requested for this purpose?

Answer: DEA received an unanticipated enhancement for its foreign program in 1987. Because negotiations with the host countries, the Embassies, and the Department of State had not begun prior to the appropriation, DEA was unable to fully utilize those resources designated for opening new offices. These new resources, therefore, were made available to other offices within the Foreign Cooperative Investigations program, and will be transferred back to open the new offices in 1989.

U.S. MARSHALS SERVICE

STATEMENT OF MR. STANLEY E. MORRIS, DIRECTOR, U.S. MARSHALS SERVICE

INCREASED WORKLOAD ON MARSHALS SERVICE

Senator HOLLINGS. Mr. Morris.

Mr. MORRIS. The workload of the U.S. Marshals Service is generated largely by the gentlemen on my right, and we cannot control it much.

As additional prisoners come into our custody, the problems in the courts become increasingly serious, especially the security considerations that Senator Bumpers mentioned in one of his questions, the growth in the number of fugitives, the expansion in the seized asset program and our responsibilities for managing the program. All of those fall upon the backs of the Marshals Service.

The best information is that the criminal justice system is, in fact, responding. Nearly half of our workload is directly related to dealing with the drug problem, whether it is prisoners awaiting trial or criminal bench hours, or the like.

I am pleased to report that we succeeded just 2 weeks ago in bringing to justice one of the most significant drug traffickers in the world, a gentleman by the name of Juan Matta. He escaped from one of Mr. Quinlan's institutions some 15 years ago, and was responsible for financing a large part of the drug traffic activities.

Our request before this committee is a modest one. We are still trying to keep up with the laws that have been passed, the Comprehensive Crime Control Act, the Drug Abuse Amendments, and the like, and we will try to continue to do so.

[The prepared statement of Mr. Morris follows:]

DEPARTMENT OF JUSTICE
UNITED STATES MARSHALS SERVICE

STATEMENT OF THE DIRECTOR
STANLEY E. MORRIS

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today, with the Attorney General and my colleagues from the Department of Justice. I will discuss the 1989 budget request of the U.S. Marshals Service in light of our coordinated law enforcement efforts with special emphasis on the Service's unique roles in the Federal criminal justice system and the War on Drugs. The U.S. Marshals Service operates under three appropriations, and we request 3,025 positions and $207.6 million for the Marshals Service appropriation; $118.3 million for the Support of United States Prisoners appropriation; and, $200 million in obligations for the Department of Justice Assets Forfeiture Fund.

To pursue the War on Drugs, the investigative agencies have heightened their focus on drug criminals, and the Courts and U.S. Attorneys have more heavily emphasized drug prosecutions. Their combined efforts dictate the uncontrollable workload and the related resource requirements of the Marshals Service.

The U.S. Marshals Service operates in the middle ground between investigations and incarceration in Federal prisons. We jail those arrested, produce them in court, protect witnesses and members of the judicial system, track down and arrest most of those who become fugitives, and move the prisoners nationwide to prison--and among prisons as well.

The investigative agencies have a certain degree of flexibility in that they can redirect their resources to accomplish their objectives. An emphasis on drug initiatives is often made possible by their shifting resources from other types of cases. To a certain extent, the Courts can juggle calendars to recognize resource shortages, at least within the parameters of the Speedy Trial Act. Prosecutors can similarly place some increased emphasis on certain cases.

But the Marshals Service cannot shift priorities or resources in response to a new focus on drug law enforcement. Like the Federal Prison System, our priorities remain constant and our workload remains uncontrollable. It is virtually dictated by the decisions and successes of other participants in the criminal justice process.

Guaranteeing the safety and integrity of the judicial process remains our highest priority. By 1989, the resources devoted to criminal proceedings will have increased 21 percent above last year's level, and the threats associated with such proceedings are expected to increase from 220 to 275. These threats will require more than 80 protective service details for judicial officers under specific threat, one-third more than in 1987. Such demands continue to outpace our available resources. We cannot fall further behind without risk of tragic incidents.

A dramatic rise in the number of major criminal proceedings in remote venues further complicates our judicial security, prisoner production, and witness protection responsibilities. Because such non-metropolitan areas lack the staff and secure facilities to conduct high-risk proceedings safely, we must temporarily assign increasing numbers of deputies from distant localities. Through February 1988, 101 have been so assigned, as compared to 51 for the same period of 1987. The associated costs are staggering: $5,269,771 through February 1988, compared to $1,837,038 at this time last year.

Closely aligned to judicial security is the protection of those witnesses whose testimony is instrumental in convicting major criminal offenders. In 1989, there will be over 800 active witnesses in this program. History has shown that in trials where they testify, 90 percent of the cases result in convictions.

The $118.3 million requested for 1989 for the Support of United States Prisoners appropriation underscores the severity of the national detention crisis. Detention needs and their costs continue to escalate beyond our control. Consequently as part of the Administration's Federal Drug Strategy, the

National Drug Policy Board defined a 5-year plan to ensure sure and steady increases in capacity of both Federal detention and Federal prisons. The first year in which to implement that 5-year plan is 1989. The $118.3 million requested will provide $98.3 million for custody expenses, and $20 million for the Cooperative Agreement Program to increase by more than 700 spaces the local jail capacity guaranteed for Federal use.

Also for 1989, we request 56 positions and $5.7 million to transport and handle more prisoners, more often, for longer periods of time, and over greater distances. This request includes 40 positions and $2.5 million for increased prisoner productions, $1.7 million for urgent Marshals Service cellblock security improvements, and 16 positions and $1.5 million for the National Prisoner Transportation System.

In 1989, prisoner productions in judicial proceedings will approach 400,000, up 32 percent in only two years, owing primarily to the fact that we will simply have more prisoners to handle. Moreover, we will have to produce each of them more often, owing to the heavy requirements of the Sentencing Reform Act. Couple these facts with the lack of nearby jail space near our Federal courts, and you readily see that our transport and handling resource requirements multiply. Deputies now routinely log extraordinary distances--400 miles one way each day is not uncommon--to fulfill production requirements. Like the jail space crisis that causes it, the prisoner production problem is not just a localized situation, it's a nationwide problem which can be solved only with increased resources.

Still another area in which the Marshals Service performs vital functions is in the Assets Forfeiture Program, which is the best vehicle yet devised to deprive criminals of ill-gotten resources and turn them to the Government's advantage. The Anti-Drug Abuse Act of 1986 advanced this effort further by allowing the proceeds from the sale of such forfeited assets to be used for the enforcement of drug laws.

Deputy U.S. Marshals perform law enforcement functions critical to the operation and management of the forfeiture program. Therefore, we seek funds for asset management teams in the 12 most active districts which maintain and dispose of over 40 percent of all seized property in the Service's custody, for improved pre-seizure planning, and timely equitable sharing of forfeited properties and proceeds with State and local agencies.

As we prepare for next year, during which we will observe the Bicentennial of both the United States Courts and the U.S. Marshals Service, we have an opportunity to assess the Service's historic role. At the beginning of our Nation, it was the Marshal who literally implemented the Federal will in what previously had been a loose confederation of former colonies. Today, our role in upholding the Constitution by enforcing the laws of the government remains as vital as ever. Our activities affect both the quality and substance of justice served. With the resources included in this request, I am confident we can continue to fulfill our obligations.

That concludes my prepared statement, Mr. Chairman. I would be happy to answer any questions the Subcommittee may have.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

United States Marshals Service

Drug Enforcement

QUESTION: The 1989 budget requests $207.6 million for the United States Marshals Service. How much of the $24.4 million or 13 percent increase over 1988 is devoted to drug enforcement?

ANSWER: Of the requested $24.4 million increase, 37.4 percent or approximately $13.2 million will be devoted to drug law enforcement.

The Marshals Service 1989 budget request includes 44 additional positions for seized asset management functions. Since the Asset Forfeiture Fund is primarily dedicated to the seizure of assets of drug violations, one hundred percent of this increase will be devoted to meet increases in workload caused by the increased use of asset forfeiture process as a law enforcement tool to fight the drug war.

Cooperative Agreement Program

QUESTION: The Cooperative Agreement Program (CAP) is designed to obtain guaranteed housing for federal prisoners in State and local detention facilities in or near federal court cities. The budget requests $20 million for CAP during 1989--an increase of $15 million. I understand that by 1989 we will have a daily prisoner population in the U.S. Marshals' custody of 9,000. This represents a 67 percent increase over the last four years.

How many of these individuals will be kept in State and local facilities?

ANSWER: The Service projected committing an estimated 67 percent of its prisoners to State and local facilities in 1989. In view of the over 60 percent--and growing--level of overcrowding in Bureau of Prison's institutions, some of which also serve as detention facilities, the percentage to be detained in State and local facilities will have to increase.

Local jails and State institutions are themselves experiencing severe overcrowding. Over 36 States, Puerto Rico and the District of Columbia are now under federal court orders to reduce prison overcrowding. These are the very institutions with which the Marshals Service seeks to contract for detention space of Federal prisoners. Usually, when limits are set on specific institutions to comply, the federal prisoners are the first to go so that local incarceration needs can be met. Hence, a significant increase in funding is required to underwrite a portion of the critically needed State and local jail expansion programs so that guaranteed detention space will be in place for Federal detainees.

The National Drug Policy Board's National Drug Strategy calls for a five-year Federal commitment to expand both Federal prisons and detention space to accommodate the population increases stemming from increased drug law enforcement, post-conviction sentencing hearings (necessitating additional periods of Marshals Service detention prior to sentencing to Bureau of Prisons incarceration), stiffer sentences under the new sentencing guidelines, and mandatory minimum prison sentences pursuant to the Anti-Drug Abuse Act of 1986, the Sentencing Reform Act and the Comprehensive Crime Control Act of 1984.

QUESTION: Is there adequate State and local jail space to facilitate the safe and timely transfer of these prisoners to Federal Court?

ANSWER: The problem of acquiring adequate detention space in State and local facilities for prisoners in U.S. Marshals Service custody has reached crisis proportions because of the continued dramatic growth in the agency's average daily prisoner population levels. In just four years (from 1984-1988), the daily population will increase by 54 percent (from 5,383 to an estimated 8,300). Further, the Sentence Reform Act will increase the population levels even higher, owing to the requirements that post-conviction sentencing hearings be held following reports to the courts. At present, the State and local facilities are already an estimated 104 to 112 percent over their current rated capacity and the Bureau of Prisons facilities is approximately 60 percent in excess of its rated capacity.

QUESTION: If this 300 percent increase in the CAP program cannot be provided, what will be the consequence?

ANSWER: It is essential that adequate funding be provided to create the necessary detention and prison space. The unavailability of detention space cannot be allowed to force changes to the policies of increased investigation, enforcement, conviction, sentencing and incarceration. As the Attorney General stated before the National Drug Policy Board, failure to take prompt and decisive action to create more detention and prison space for federal prisoners will result in the eventual breakdown of the federal judicial system as there will be no detention space for these ever-increasing federal prisoner populations.

Shelburne Parish Glebe

QUESTION: As a result of a criminal forfeiture by a major drug trafficker, the Attorney General was authorized to dispose of Shelburne Parish Glebe, a complex of buildings built in 1773 in Loudoun County, Virginia. In 1974, these buildings were listed in the National Register of Historic

Landmarks as a rare example of an Anglican parish glebe, the only such property remaining in Northern Virginia.

The recently published annual report of the Advisory Council on Historic Preservation indicates neither the Council nor Virginia's State Historic Preservation Office were brought into this transaction until a buyer had been secured. The report says that the buyer is not willing to accept the preservation covenants on the estate.

What is the current situation with regard to the estate?

ANSWER: The $4.1 million sales contract entered into for the sale of the Shelburne Glebe Estate has been rescinded by mutual consent. At present, the Marshals Service is completing a reassessment of the property to include appraisals with and without the proposed restrictive covenants and/or partial restrictions. Upon completion of this reassessment, a decision will be made, and the Advisory Council on Historic Preservation and the Virginia State Historic Preservation Office notified. This will complete the requirements for the Section 106 review process. A sales date is anticipated for early summer.

QUESTION: Although the National Historic Preservation Act is 20 years old, this incident illustrates that some agencies are unaware of their responsibilities for Section 106 review when land transfers are involved. Undoubtedly, this is a rare matter, but what has the Marshals Service done to be aware of the need for Section 106 reviews of properties listed on the National Register?

ANSWER: In addition to notifying personnel involved in the seizure, forfeiture and disposition of real properties in our Regional and District Offices, information on the Section 106 review requirements has been incorporated into the agenda at our forty-hour seized property training program. This has also been incorporated into the Asset Management Seminars for Assistant U.S. Attorneys being conducted in coordination with the Attorney General's Advocacy Institute. The Section 106 review requirement is also being included in our revised seized property handbook.

QUESTIONS SUBMITTED BY SENATOR RUDMAN

United States Marshal Service

Adoptive Forfeitures

QUESTION: It is my understanding that a large portion of the funds that are distributed from the Assets Forfeiture Fund in the form of equitable sharing payments to States and localities result from so-called adoptive forfeitures--those forfeiture actions which are strictly the result of a State or local law enforcement investigation which are turned over to the Federal Government for processing. Please provide for the record a detailed accounting of the value of the forfeitures which are adoptive.

ANSWER: "Adoptive forfeiture" is only a term of art used by those engaged in the forfeiture process. Perhaps a more accurate description would be the term "adopted seizure", as it would denote seizures made by State or local law enforcement agencies which the federal investigative bureaus may "adopt", where a valid prosecutorial reason exists, in order to process them to forfeiture under federal procedures, meeting federal standards for probable cause and federal burdens of proof.

The U.S. Marshals Service is responsible for tracking the value of funds disbursed from the Assets Forfeiture Fund as the result of equitable sharing--with State and local law enforcement agencies--following forfeiture of the seized assets to the Federal Government and disposal of those assets, if necessary, through sale.

Although the U.S. Marshals Service cannot determine which disbursements result from so-called adoptive cases and which result from joint Federal/State/local investigations, the Drug Enforcement Administration (DEA) and the Federal Bureau of Investigation (FBI) are able to make the distinction.

A detailed accounting of forfeitures or related equitable sharing disbursements and property transfer which result from adopted seizures is not available. However, the DEA and the FBI collect general statistics on adoptive cases and can provide summary information. In 1987, the Department processed 2,191 adoptive forfeiture actions for a total value of $48.4 million ($32.0 million cash, $16.4 million property). In 1988, this is projected to increase to 2,857 actions for a total value of $63.3 million ($40.5 million cash, $22.8 million property) and in 1989 is projected to increase to 3,897 actions for a total value of $84.8 million ($58.1 million cash, $26.7 million property). About 70 to 80 percent of the adoptive forfeiture actions are reported by DEA.

Assets Forfeiture Fund Transfer to Bureau of Prisons

QUESTION: In the 1988 appropriations bill, Senator Chiles added language to permit surplus monies remaining in the Assets Forfeiture Fund at the end of the fiscal year to be transferred to the Bureau of Prisons for prison construction. What is the Department's most recent estimate of the amount of surplus funds which will be available for this purpose beginning October 1, 1988?

ANSWER: The Department anticipates a surplus of approximately $80,000,000 on October 1, 1988. In March of 1987, the President transmitted an amendment to the 1989 budget request to the Congress dealing with funding problems resulting from the Mariel Cuban riots in Atlanta, Georgia, and Oakdale, Louisiana. If enacted, this amendment will authorize the Attorney General to transfer $88,659,000 from the Assets Forfeiture Fund to the Bureau of Prisons for prison and detention center construction. Because the entire $88,659,000 will not be available on October 1, 1988, more than one transfer during the fiscal year will be necessary, as is permitted by the legislation, to fund the entire amount.

Assets Forfeiture Program

QUESTION: The Department of Justice has been criticized in the past for the backlog which has occurred in the processing of requests under the Equitable Sharing Program, which makes payments to State and local law enforcement agencies for their participation in criminal investigations that result in forfeited assets. The 1988 Continuing Resolution Conference Report directed the Department to submit a report on the status of all pending requests under the Equitable Sharing Program, including recommendations on actions necessary to eliminate any backlog in the program. This report was due March 1. It has not been received by the Committee despite repeated requests. It is my understanding that the report has been complete for quite some time and is simply waiting for someone within the Department to sign off on it. When can we expect delivery of this report?

ANSWER: The 30-page Report of the Attorney General to the Congress on the Justice Assets Forfeiture Program and the Status of Equitable Sharing Requests was submitted on May 10, 1988.

GENERAL QUESTIONING

INTELLIGENCE ON ALIEN FELON GROUPS

Senator HOLLINGS. Thank you.

Senator Chiles.

Senator CHILES. Thank you, Mr. Chairman.

Mr. Lawn, last week, when Judge Sessions reviewed the FBI's intelligence on organized crime in this country, he told us that DEA is developing intelligence on alien felon groups in the country.

Can you tell us a little bit about this intelligence, and how it is shared with other agencies, especially INS?

Mr. LAWN. Yes, sir. Specifically, in relation to crack, last week we visited the Dominican Republic. The Dominicans are one of the major groups involved in crack.

An Intelligence Center has been developed in Santo Domingo and is linked directly to the El Paso Intelligence Center. All law enforcement agencies in the Dominican Republic have access to the Center. In addition to the link with EPIC, we have a direct link with the Police Department of the City of New York. In New York City the Dominicans are the preeminent group dealing in crack.

The information derived from this Joint Intelligence Center in Santo Domingo is deposited in the El Paso Intelligence Center daily and, as I said, is available to law enforcement offices throughout the country.

ORLANDO, FL, INTELLIGENCE ON HAITIANS

Senator CHILES. Do you have any kind of direct link or are you sharing information with some of our local law enforcement in Florida?

The Orlando Police Department, for example, to my knowledge, has more information and has done more work in trying to trace the Haitians, and Jamaicans and their crack activities.

Mr. LAWN. Yes, sir, it is my understanding, based upon a recent trip to Miami that we have a very close working relationship.

Senator CHILES. This is Orlando I am talking about now. The Orlando Police Department has more information on Haitians.

Mr. LAWN. I will make that determination this afternoon, sir, and provide it for the record. But it is my understanding that we do have a direct working relationship on the Haitians.

Senator CHILES. I wish you would check that. Of course, I am sure that Florida Department of Law Enforcement has some of that information as well.

Mr. LAWN. Yes, sir.

[The information follows:]

INTELLIGENCE CENTER

DEA maintains field offices and Federal drug enforcement task forces in both Miami and Orlando. Police departments in these cities do not have a direct communications link with the Joint Intelligence Center in Santo Domingo. Direct access is currently available only to the El Paso Intelligence Center [EPIC] and New York Police Department. However, police departments in Miami and Orlando have access to the intelligence data bases at EPIC. Using these mechanisms, DEA is able to maintain a close working relationship and intelligence interchange with law enforcement agencies in both cities.

INTELLIGENCE SHARING

Senator CHILES. Are you sharing that information with INS now?

Mr. LAWN. Yes, sir. INS plays a major role in the El Paso Intelligence Center. We share information regularly. As was mentioned, we work very closely with INS not only on the southwest border with Operation Alliance but on a daily basis.

Senator CHILES. Mr. Nelson, my understanding was, after our hearings, that Senator Kennedy said that he would like his counsel to get together with your general counsel to go over these bills we have introduced. I hope we can do that on a speedy basis, because he has indicated that he would help us try to move them, and Senator Simpson as well.

We are delighted to have your support, and I think the quicker we could try to get those moving, the better.

Mr. NELSON. Yes, Senator Chiles, we fully agree.

As you indicated, after you left the Kennedy-Simpson hearing last week, I did testify and indicate our support on the record for the legislation. The Attorney General has done so here today. We certainly will work with your staff and the subcommittee staff to try to move those.

If I might just go back to your last question to Mr. Lawn, repeating what he said, there certainly is good information sharing. It can improve, we all agree.

Part of the Immigration Reform and Control Act was better information sharing between local, State and Federal law enforcement, all of the agencies represented here. We do have some major pilot programs in the country, including one in Miami, and it is moving forward.

Another more generic thing, when Griffin Bell was Attorney General, a number of years ago, there was a memo from him, a directive, basically saying that there should not be coordination and cooperation between local law enforcement and Immigration.

It was changed with William French Smith, who put out a directive saying that there should be cooperation. Recently, Attorney General Meese reaffirmed that and even went farther saying that there not only should be cooperation but it is important that there is. I think, overall, we have seen a lot of that.

Certainly, an important part of the Immigration Reform bill is to do more, which your bills also do, to try to deal with the criminal aliens, particularly those involved in felonies, after they complete their sentences, they should be promptly deported from this country. We are working on that also by having more hearings now, while people are in institutions, so their deportation can be ordered.

Senator CHILES. It is important that we try to get those hearings and have them processed, so that when they walk out from behind bars, we can put them on the boat or the plane.

Mr. NELSON. That is our intention and we are beginning to work on that.

ASSET FORFEITURE FUND TO BUILD PRISONS

Senator CHILES. I thank you for that.

Mr. Morris, the Assets Forfeiture Fund, what is the balance of the fund as of today?

Mr. MORRIS. There are a number of ways to look at the balance. We have over a half a billion in our inventory at present, including property, cash and other commodities.

We will transfer in the next few months over $88 million to the Bureau of Prisons, a provision, Senator Chiles, that you added in appropriation language last year, to assist them in the reconstruction at Oakdale and Atlanta. The income projected for 1988 will be $175 million.

Senator CHILES. What is the income that you project?

Mr. MORRIS. It is $175 million.

Senator CHILES. You have about $500 million in the pipeline overall, and you expect to add to that $175 million this year.

Mr. MORRIS. No, that would be gross income.

Senator CHILES. It is part of the $500 million?

Mr. MORRIS. I do not think that that is correct. Most of the $500 million is inventory of seized cash and property which will eventually be forfeited.

Senator CHILES. You expect to let the Bureau of Prisons have about $88 million.

Mr. MORRIS. Yes, Senator Chiles.

Senator CHILES. What are you going to be able to do with that $88 million, Mr. Quinlan?

Mr. QUINLAN. Primarily, it will be used to restore funds to the Buildings and Facilities appropriation for new construction which were diverted to finance the reconstruction of Oakdale and Atlanta and other costs related to last year's Cuban riots.

Senator CHILES. Mr. Chairman, this is the second time that I have helped to pay for Oakdale.

Mr. QUINLAN. That is true, Senator.

USE OF MILITARY BASES FOR PRISON FACILITIES

Senator CHILES. What is the status of the cooperation between DOD and the Bureau of Prisons in using military bases as correctional facilities? I understand that there is some reason for hope in this cooperative effort.

Mr. QUINLAN. There is excellent cooperation thanks to your help in that regard. We have recently expanded our long-term relationship with the Air Force through the help of General Robert Russ at Tactical Air Command. There is a possibility of expanding to several of the Tactical Air Command bases, including Homestead. We have also initiated relationships with the Navy, thanks to General Anthony Lukeman in the Marine Corps.

The military has been very receptive, I think. Secretary Carlucci has been instrumental in addressing this issue with the Attorney General and indicating his support for military cooperation with the Bureau of Prisons in locating minimum security facilities on military bases.

Senator CHILES. As we go forward with this whole problem of treatment, as well as incarceration, along the parallel track comes the talk of closing some military bases, and we are going to hear an awful lot more about it as we see the military budget squeeze.

I think that it is a time at which conscience and convenience kind of cross, and a time of opportunity for you all to be very alert in using them for treatment as well as for incarceration. It can go all the way from INS holding facilities to the whole gamut, I think, of what we are looking at.

Mr. QUINLAN. I agree, Senator.

Senator CHILES. I thank you.

Senator HOLLINGS. I thank you very much.

Senator Inouye, who is chairing another hearing, has some questions, and some of the other Senators. The record will stay open not only for the questions, your answers, but any further comments.

We appreciate very, very much your indulgence here this morning.

RISS PROGRAM

Senator HOLLINGS. There shall be made part of the record a statement by the RISS Project Directors, a paper summarizing the RISS program and some information on the Regional Organized Crime Information Center.

[The RISS information follows:]

RISS PROJECT DIRECTORS

For Fiscal Year 1989, the Regional Information Sharing System (RISS) Grant Program respectfully requests that Congress award $12.6 million to continue support of drug trafficking and organized crime fighting efforts.

The rise of drug trafficking and the endless emergence of organized crime groups nationally requires a concerted effort by federal, state, and local law enforcement. The RISS Program was funded by Congress to address this need, and it is emerging as the key to successful cooperation by law enforcement in their coordinated attack on these criminal enterprises.

This proven program has produced well over $2 billion in results since its implementation as compared to costs of less than $75 million over several years. Its budget has not grown; rather, it has decreased as grant amounts have had to cover longer grant periods.

In 1987 alone, with Congress' investment of $12 million, the member agencies were able to generate seizures of $245,923,162 worth of drugs, $15,409,435 worth of contraband, $8,330,311 in cash, and 5,394 arrests, along with the collection of $78,000 in fines, $1,581,515 in restitution, and $56,000,000 in IRS referrals.

President Reagan stated, "It is at the state and local level, and only there, that the war against crime can finally be won." and "The public must encourage local and state police agencies to do more to crack down on racketeering." (New York Times, 1/12/86). Several leaders in Congress have consistently encouraged continued financial support for this valued program by communicating with the Appropriations Committee their support for this program.

The success of these projects over the years has resulted in support from many established law enforcement organizations such as, but not limited to, the International Association of Chiefs of Police (IACP), the National Sheriffs Association (NSA), and the National Association of State Drug Enforcement Agencies (NASDEA). These organizations have seen the value of this congressional program to law enforcement nationally. The Attorney General of the United States realizes that this is indeed a good and valuable program that must be continued.

The projects have also been able to enhance other worthwhile Congressionally Funded Programs. The states of California, Ohio, Massachusetts, and others have in some way incorporated the RISS Projects in their statewide narcotics programs which were set up pursuant to the Anti-Drug Abuse Act of 1986. Other states are also beginning to include the RISS Projects as they carry out their individual state or local narcotic initiatives.

Oversight: The Bureau of Justice Assistance administers the RISS program and has established guidelines for provision of services to member agencies. The projects are subject to oversight, monitoring, and audit by the U.S. Congress, Bureau of Justice Assistance, the GAO, a federally-funded program evaluation office, the U.S. Department of Justice, and local government units. Evaluation of project operations has been very positive. A House Subcommittee found that: "The projects are addressing a law enforcement intelligence sharing void which exists between the levels of federal authority and state/local authority. There is a wide acceptance and approval of RISS project activity among state and local law enforcement agencies. There is considerable benefit to the federal law enforcement community from direct participation in RISS projects or from services which are derived directly from RISS project activity."[1] The GAO testified that: "We were quite comfortable that the processes were in place to protect the integrity of the federal monies."[2] A federally funded research firm stated: "In general, the program activity data analysis reflects favorably upon the development of the RISS program."[3] In testimony before a House Subcommittee, a nationally respected police administrator stated, "I can say to you gentlemen today that in my 33 years of involvement in law enforcement, over 33 years, that of all the federal projects that have come down our way, that we get more good out of and have derived more out of the

RISS projects than any other project that has been funded by the federal grant."[4]

Case-specific support has been furnished to hundreds of local and state police and sheriff departments during 1988. While most of these cases do not attract the publicity afforded many federal investigations, they have a major impact in local jurisdictions, the grass-roots of law enforcement and have earned the RISS projects the praise and support of officials across the country.

The RISS Projects include a nationwide membership of over 2,000 state, local, and federal criminal justice agencies including over 200,000 sworn law enforcement officers. They provide cost-effective services to these agencies and encourage communication, cooperation, and coordination among law enforcement.

Each of the projects include federal agencies as members and their work brings benefit to every federal law enforcement agency.

The projects are working to effect additional funding from non-federal sources. However, cuts in revenue sharing and across the board reductions in federal aid are affecting fund availability at the state and local level.

In testimony submitted during the 1988 appropriations hearings, we told you that the member agencies intended to underline their support of the RISS Projects by supplementing the Federal appropriation to support a portion of the cost of RISS operations. In the intervening year, contributing support in the form of membership fees, direct funding, and assumption of the costs of personnel and facilities has generated additional funding for the Projects. This action by the state and local members, taken despite the ever increasing demand on law enforcement budgets, serves only to emphasize the value which they place upon the programs.

In conclusion, we support the President's contention that organized crime be fought on the local level. Funding of the RISS Projects at a $12.6 million level would make the fight successful in Fiscal Year 1989.

---

[1] Findings of House Committee on Government Operations (House Report 99-216), July 22, 1985.

[2] GAO testimony at Hearings before a Subcommittee of the House Committee on Government Operations, March 26, 1985. Referred hereinafter as "Hearings".

[3] Institute for Intergovernmental Research, the "RISS Projects-Analysis of Activity", prepared for the Bureau of Justice Assistance, July, 1985.

[4] Chief Joe D. Casey, President, International Association of Chiefs of Police: Hearings.

THE REGIONAL INFORMATION SHARING SYSTEM

To assist the projects in implementing this Program, the U.S. Department of Justice, through their Office of Justice Programs and the Bureau of Justice Assistance, worked with the Projects to institute the following components:

1. Information Sharing Component. Every project will maintain and operate either a manual and/or automated information sharing component that is responsive to the needs of participating enforcement agencies in addressing multijurisdictional offenses and conspiracies. This component must be capable of providing controlled input, dissemination, rapid retrieval, and systematic updating of information to authorized agencies.
2. Analytical Component. Every project will establish and operate an analytical component to assist the project and participating agencies in the compilation, interpretation, and presentation of information provided to the project. This component must be capable of responding to participating agency requests for analysis of investigative data.
3. Telecommunications Component. Projects may establish and/or maintain a telecommunications system designed to directly support the operation of the Information Sharing Component and Analytical Component, and to support project sponsored investigations and activities.
4. Investigative Support Component. Projects may establish and operate an investigative support component by providing financial assistance to participating agencies for their conduct of multijurisdictional investigations. Financial resources may include funds for the purchase of information, contraband that may be used as evidence, services, investigative travel and per diem, and overtime compensation. Funds expended and activities conducted under this component must directly support the operation of the Information Sharing and Analytical Components.
5. Specialized Equipment Component. Projects may establish and maintain a pool of special investigative equipment for loan to participating agencies. The loan of such equipment must directly support the operation of the Information Sharing and Analytical Components.
6. Technical Assistance Component. Projects may establish and maintain a component to provide technical assistance to member agencies. Through use of project personnel and others in participating agencies, consultation, advice, and information may be made available to member agencies concerning use of specialized equipment, investigative procedures, accounting of project funds if provided by the project in support of investigations, and information analysis. This component will emphasize use of technical resources among the projects as necessary and available. Technical assistance in the form of active participation by project personnel in member agency investigations is prohibited.
7. Training Component. Projects may establish and maintain a training component to upgrade investigative skills of personnel from participating agencies. Such training assistance may consist of financial support to send personnel to training courses, seminars, and conferences or, more commonly, design and delivery of special training courses by project staff. Training provided under this component must support the project goals and objectives.

To further enhance the coordination and exchange of information among member law enforcement agencies, the projects have initiated additional support service activities including distribution of project publications/digests and sponsorship of membership conferences.

MID-STATES ORGANIZED CRIME INFORMATION CENTER
(MOCIC)

The Mid-States Organized Crime Information Center in Springfield, Missouri, has been funded since 1980. Its Grantee Agency is the Missouri Attorney General's Office.

MOCIC has staff of twenty-three and services 478 member agencies in Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota and Wisconsin.

MOCIC has experienced many recent and significant successes. One primary example involves a metropolitan task force composed of six (6) local police departments who decided to come together against an ever-increasing narcotics problem common to all. Through use of MOCIC surveillance and communications equipment and $10,000 in confidential funds seed money, results to date include 137 defendants on 210 cases. Seizures thus far amount to over $1.2 million in narcotics and $225,000 in property consisting of cash, vehicles, a boat and other miscellaneous property. An equally important but frequently overlooked aspect of our support is the intelligence contribution. To date, 292 intelligence submissions have been made to the MOCIC data base. More significant results will follow as case progresses with new Federal support from the Drug Enforcement Administration who has joined the effort.

Another recent success involves four county sheriff departments and three local police departments in central Wisconsin who are combined in a narcotics effort. Through the use of MOCIC confidential funds totalling just over $12,000, they have thus far accounted for 64 arrests, and 43 cases pending in the court system. Twenty-one (21) defendants have plead guilty and officers have recovered over $55,000 in illegal drugs and property seizures. Ninety-three (93) subjects have been submitted to our intelligence files. Again, more results will follow now that state and federal resources are being brought into the case.

ROCKY MOUNTAIN INFORMATION NETWORK
(RMIN).

The RMIN Project, in operation since 1977, is centered in Phoenix, Arizona, and services approximately 542 law enforcement member agencies within the eight-state area. RMIN membership includes federal, state, county, and city jurisdictions.

The RMIN area is composed of the states of Arizona, Colorado, Idaho, Montana, New Mexico, Nevada, Utah, and Wyoming; approximately 25% of the geographic area of the continental United States, but less than 8% of the total population.

More than 50% of the RMIN membership are small, rural law enforcement agencies, with very limited resources to combat traveling criminal elements which are increasingly active in these jurisdictions.

Nevada agencies, with the assistance of the Drug Enforcement Administration and the California Drug Task Forces, used RMIN services and confidential funds to identify a drug smuggling ring. Thirteen (13) major offenders were arrested. Officers also seized cocaine with a street value of more than $1 million. And they seized as proceeds from drug sales two condominiums valued at $500,000, guns worth $500,000, five cars valued at $125,000 and gaming proceeds, certified checks and currency totaling $4,500.

The Arizona State Game and Fish Department, with the help of federal and California agencies, used RMIN services and funding to identify and issue search warrants on 18 locations in Arizona and California for unlawful commercial trade in live wildlife and wildlife parts. Seven other subjects in seven other states are awaiting federal prosecution.

Not only were large numbers of illegal animals recovered, but narcotics, automatic weapons parts, and over $10,000 in stolen property were also recovered.

WESTERN STATES INFORMATION NETWORK (WSIN)

The Western States Information Network was established in 1981. It is located in Sacramento, California, and its grantee agency is the California Department of Justice.

WSIN covers the states of Alaska, California, Hawaii, Oregon and Washington, an area inhabited by approximately 31.8 million people. WSIN has 689 member agencies comprised of 474 municipal, 121 county, 6 state, 22 federal, 29 prosecuting and 37 other law enforcement agencies.

WSIN produced 14 investigative and prosecutorial analytical charts for the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco and Firearms, and the California Attorney General's Bureau of Narcotic Enforcement. These charts were used to determine targets, coordinate intelligence gathering and evidence for prosecution. This investigation resulted in the arrest of 38 Hells Angels in 5 different states, the seizure of $3.5 million, 25 pounds of gold, 40 pounds of methamphetamine, and 3 non-operational methamphetamine laboratories.

The Eugene Police Department, Oregon State Police, Lane County District Attorney, and the Drug Enforcement Administration requested $9,000 for an investigation of a runaway methamphetamine manufacturing and distribution problem. This investigation resulted in the arrest of 31 dealers and the recovery of $75,000 in contraband.

NEW ENGLAND STATE POLICE INFORMATION NETWORK (NESPIN)

The State Police Agencies of New England formerly entered into an interstate compact in June 1967. This mutual aid compact created the New England State Police Administrators' Conference. In 1979, the State Police Administrators requested and received federal support through the Massachusetts Department of Public Safety for an interstate program for fighting narcotics smuggling and organized crime in New England. This program is called the New England State Police Information Network (NESPIN). In 1983, the scope of NESPIN was enlarged to include the direct participation of local law enforcement. At present, 158 state, local, and federal law enforcement agencies are active members of the Network.

In the twelve month period ending June 30, 1987, the Project provided direct substantive assistance to NESPIN member agencies which was instrumental in the arrest or indictment of 607 individuals and the seizure of approximately $11 million in narcotics, currency and other contraband property.

The following examples illustrate the impact and value of NESPIN services:

> In October of 1985, NESPIN assistance was requested by the Rhode Island State Police who were working with the U.S. Customs Service in attempting to identify the source of P2P, which is a key ingredient in the illegal manufacturing of "speed" or PCP. The NESPIN analysts working closely with the U.S. Customs Service investigators analyzed information over a 17 month period. This analysis directly contributed to the arrest of the smuggler and seizure of over 105 gallons of P2P, which could have produced over $13 million of illegal amphetamines.
>
> In July of 1987, the Boston Police seized 8 kilos of cocaine and arrested 13 individuals for trafficking in cocaine. This investigation was supported with NESPIN funds and involved the

Massachusetts State Police as well as the Suffolk County District Attorney's Office.

MIDDLE ATLANTIC-GREAT LAKES ORGANIZED CRIME LAW ENFORCEMENT NETWORK (MAGLOCLEN)

The Middle Atlantic-Great Lakes Organized Crime Law Enforcement Network is located in Malvern, Pennsylvania, a suburb of Philadelphia. Its grantee agency is the Pennsylvania Crime Commission.

The project received a planning grant in July of 1980, and became operational in June, 1981. It covers the states of New York, New Jersey, Delaware, Maryland, Pennsylvania, Ohio, Indiana, Michigan, and the District of Columbia. By special agreement, Canadian agencies in the provinces of Ontario and Quebec may also participate in the project. Michigan agencies have been unable to join due to restrictive legislation in that state, however legislation is pending which would allow their membership in MAGLOCLEN.

MAGLOCLEN has a staff of twenty-six and serves 163 state, county, local, federal, and provincial law enforcement agencies which include over 100,000 sworn law enforcement officers.

The project's mission is to encourage and aid the investigation, by member law enforcement agencies, of major interstate conspiracies. It emphasizes communication, coordination and cooperation among its member and among the police community at large.

In May, 1987, several Ohio agencies began an interjurisdictional investigation into crime conditions they felt were associated with "Crack" cocaine abuse in their city. Asking for an intelligence assessment from MAGLOCLEN as well as other services, they received confirmation of their suspicion when the assessment indicted that the acceleration of other crimes in their city was, in fact, directly attributable to the illegal "Crack" trade.

Working with the county prosecutor, the Drug Enforcement Administration, and the U.S. Postal Inspectors, and basing their tactical and strategic approaches on the MAGLOCLEN assessment, they successfully concluded their investigation with nineteen indictments handed down involving forty-nine counts of "Aggravated Drug Trafficking," two counts of "Manufacturing Controlled Substance" with one firearms specification, and five search warrants. Ten arrests were made, 700 unit doses of "Crack," $11,000 in cash, and motor vehicles valued at $29,600 were seized along with small amounts of marijuana.

In 1987, a joint investigation of over one year's duration resulted in three major drug traffickers being arrested in upstate New York when the New York State Police made the biggest drug bust in the history of the Syracuse, New York area. Eleven pounds of cocaine were seized with an estimated street value of over one million dollars. In addition, cash in the amount of $100,000 was seized as well as 8 pounds of marijuana, $3,000 worth of stolen property and three illegally possessed handguns.

The interagency cooperation included the New York Organized Crime Task Force, the Special Prosecutor's Office in New York City, the Federal Bureau of Investigation, the Onondaga County District Attorney's Office, and the Syracuse (NY) Police Department.

The OCTF stated that the significance of the case lay in the fact that the investigation was "...able to follow the drug trafficking along the distribution chain and to identify and establish the roles of the...cocaine procurer, financier, intermediary and distributor."

All of the defendants were charged with Class A felonies, punishable by a maximum of life imprisonment.

Although this investigation is closed, spin-off leads from it have led police to "...several major narcotics dealers in (two counties)."

THE LEVITICUS PROJECT ASSOCIATION

The Leviticus Project was originally created in 1978 and provides a multi-state interagency program of coordination and cooperation for investigation and prosecution of organized crime in the coal, oil, and natural gas industries. The association includes 27 law enforcement and regulatory agencies in Alabama, Arizona, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Mississippi, Missouri, New Mexico, Oklahoma, Pennsylvania, Tennessee, Virginia, West Virginia, and Wyoming. Its grantee agency is Virginia Department of Criminal Justice Services and the administrative office is located in Richmond, Virginia.

The Leviticus Project Association targets securities, tax, bank, and insurance frauds; theft of heavy equipment, advance fee schemes, industry related grand larceny and property theft, and fraudulent purchase contracts among other fossil-fuel related crimes.

The bulk of the Project grant provides funding to member agencies to directly support investigations and prosecutions. The remainder supports the central administrative office in Richmond, Virginia, where the Association Management Information System is operated.

The Management Information System is an automated criminal information system specifically devoted to coal, oil, and gas related criminal activity. The system provides an index to all investigative data assembled and developed by Association members through the life of the Projects. Jurisdictional access is obtained through formal inquiries to the administrative office.

The Association has experienced major membership expansion during the past year, thereby extending the impact of each Federal dollar that we receive. This has been achieved through a substantial increase in the amount of contributed support that we receive from our member agencies in the form of personnel costs and related administrative overhead. Agencies which formerly received grant support for staff and related costs have, or are in the process of, absorbing those costs within their own budgets. By the end of fiscal year 1988, Association member agencies will be contributing personnel and fringe benefit costs in an amount exceeding 50% of our budget for FY 1987, thus freeing up additional funds for the investigation and prosecution of a greater number of interjurisdictional cases.

Selected cases which were concluded in 1987 serve as examples of the complex nature of the criminal activity under investigation and of the results that can be achieved through cooperative effort and joint case management.

In 1983, the New York County District Attorney's Office received a series of complaints of a scheme to defraud investors through the sales of unregistered securities in a coal venture. The complaints were made in response to a warning brochure published by the Leviticus Project.

It soon became apparent that an Arkansas based company was engaged in active boiler room sales and soliciting many states including Leviticus member states, Alabama, Georgia, Indiana, and New York. Member agencies in each of the affected Leviticus Project Association states, joining in a concerted and focused investigation were able to develop evidence proving that the company had been defrauding investors for years under frequently changing names and at varying locations.

After an extended investigation, the case was referred to the United States Attorney in the Eastern District of Arkansas. The U.S. Attorney, after presenting the case to the Federal Grand Jury, obtained indictments against three principals charging them with violations of 18 U.S. Code, Section 1962 (Racketeer Influenced and Corrupt Organization or RICO), Failure to File Federal Tax Returns, Conspiracy to Defraud, Mail Fraud and Wire Fraud.

Guilty pleas were obtained and the defendants were sentenced to a total of 17-1/2 years imprisonment and ordered to make restitution in the amount of $1,500,000.

The Association also provided the Internal Revenue Service with a case referral with an investment value of $10,000,000.

In a second case an investigation, originally started in 1981, revealed that three corporations, controlled and operated by five individuals were engaged in the fraudulent sale of securities in coal futures contracts. The corporations were based in Tennessee and were operating in both Tennessee and Virginia. The investigation was initiated by the Virginia State Police, a Leviticus Project Association member, and accepted as a Project investigation. Cooperative efforts were initiated with the Tennessee Bureau of Investigation and the Tennessee Securities Division (later to become an LPA member) and in late 1983 charges against the five principals were brought in Tennessee for obtaining money by false pretences, Fraudulent Sale of Securities, and operating as unregistered broker/dealers. Sentences totaling over 38 years imprisonment and $32,800 in fines were imposed.

In 1987, three of the above defendants were tried for related crimes in Virginia and all were convicted and sentenced to additional five year terms. They were also required to make restitution to the victims and to pay court costs.

REGIONAL ORGANIZED CRIME INFORMATION CENTER
(ROCIC)

The Regional Organized Crime Information Center (ROCIC) was the prototype RISS project, founded in 1973, and receiving federal funds since 1974. Its grantee is the city of Nashville, Tennessee, where it is located.

ROCIC covers the states of Oklahoma, Texas, Arkansas, Louisiana, Mississippi, Florida, Georgia, Alabama, South Carolina, North Carolina, Tennessee, Kentucky, Virginia and West Virginia.

ROCIC serves 249 municipal, county/parish and state agencies, and Federal agencies which represent over 46,350 sworn law enforcement officers. It covers the largest land area of any RISS project.

The project provides a vehicle for the collection, evaluation, storage and dissemination of information concerning organized traveling criminals.

ROCIC helped Kentucky state and local agencies with funding and analytical services. This narcotic investigation crossed over to a MAGLOCLEN member agency in Indiana where the actual narcotics transaction occurred. Arrests were made and $675,000 of narcotics was recovered, making it the largest drug bust in Evansville, Indiana's history.

Further information lead to a biker gang operating out of Philadelphia, Pennsylvania. This multi-million dollar operation is now being investigated.

Several agencies in South Florida were using ROCIC services in their targetting of traditional organized crime. With the sale of allegedly stolen liquor made available to the members of the organized crime groups, the agencies were able to penetrate the upper level of the Buffalino LCN family. As the operation progressed, the investigation broadened from liquor and stolen property violations to narcotics, bookmaking, extortion, pornography, conspiracy to manufacture silencers and counterfeit trade violations, and firearm sales by a convicted felon. Criminal charges were placed against members of three major LCN families. Criminal charges were also placed, or are pending, against principal non-member Mafia associates. A total of 13 subjects were arrested for federal RICO charges and 8 subjects were arrested on state RICO charges. They also received information on thirty more subjects for possible future arrest.

LETTER FROM NATIONAL CONFERENCE OF STATE LEGISLATORS

Senator HOLLINGS. We shall include in the record a letter from the National Conference of State Legislators.

[The letter follows:]

National Conference of State Legislatures

444 North Capitol Street, N.W.
Suite 500
Washington, D.C. 20001
202/624-5400

President Ted Strickland
President
Colorado State Senate

Executive Director
William T. Pound

March 22, 1988

Honorable Ernest Hollings
United States Senate
Washington, DC 20510

Dear Senator Hollings:

I am writing on behalf of the National Conference of State Legislatures, as the chairman of its Law and Justice Committee, to emphasize the need for a continued strong commitment to the fight against drug abuse. The partnership between federal, state, and local government for enforcement activities that was created in the crisis atmosphere of October 1986 (the Anti-Drug Abuse Act) must not be abandoned.

The Anti-Drug Abuse Act of 1986 authorized grants of $225 million to state and local governments. That was pared to an appropriation of $75 million the first year as states laid the groundwork for their assault. Now the Administration proposes complete elimination. NCSL believes this program should be continued as an essential component of the federal-state effort to eradicate drug use.

Funds that have reached the states are enhancing investigation and prosecution of drug-related offenses, facilitating creation of multi-jurisdictional task forces to combat street sales of crack, and permitting increased marijuana eradication. Treatment and rehabilitation are an important part of the long-term efforts to eradicate the scourge of illicit drugs and increases in these programs are welcome. However, we must also face the reality of the unending combat in rural communities as well as in the streets of our urban centers.

State and local law enforcement agencies that seek to forge a vigorous assault on illicit drugs cannot do so if the federal government reneges on its much-publicized commitment to reinforce our efforts. Our adversaries will not be intimidated by such empty threats. Clearly, we cannot win this war with words alone; a properly funded, cooperative effort is our best hope.

NCSL believes that the federal budget deficit is one of the nation's gravest problems, demanding creative and cooperative solutions involving all levels of government. We therefore support continued efforts to reduce the federal deficit. We realize this means both Congress and the Administration must wrestle with many complex and difficult choices. Most wrenching, perhaps, will be balancing this overriding imperative to reduce the federal deficit against calls for adequate funding for many important programs.

There is a fundamental principal, however, that NCSL believes should guide budgetary decisions. It is critical that the fairness and integrity of the intergovernmental fiscal system remain intact. As articulated in our official policy:

> "States are willing to share proportionately in the necessary cuts; however, the states have contributed disproportionately to past efforts to reduce the deficit as a result of federal spending and revenue initiatives."

NCSL realizes that states will have to accept many spending cuts in state programs as their fair share of the deficit reduction burden. However, we cannot accept proposals that rely too heavily on state and local government assistance programs to produce the needed deficit reduction. NCSL has identified a handful of priority programs, such as state and local anti-drug abuse grants, that we feel should be protected from significant reductions.

NCSL looks forward to working with Congressional leaders to develop creative and responsible solutions to our serious national budget problem. We will continue to work for a solution that respects the integrity of the intergovernmental fiscal system; a system which has taken years to evolve and should not be significantly altered without consideration of the implications for state and local governments.

Sincerely yours,

Don Doyle
Don Doyle
Chair, Iowa Senate Judiciary Committee
Chair, NCSL Law and Justice Committee

Ted Strickland
Ted Strickland
President, Colorado Senate
President, NCSL

SUBCOMMITTEE RECESS

Senator HOLLINGS. This concludes our hearing for today. The subcommittee will recess now until next Thursday, April 28, at which time we will hear from the Department of State.

Thank you very much.

[Whereupon, at 1:20 p.m., Wednesday, April 20, the subcommittee was recessed, to reconvene Thursday, April 28, 1988.]

LIST OF WITNESSES, COMMUNICATIONS, AND PREPARED STATEMENTS

'age

American Fisheries Society, letter from 162
Arnold, Richard S., Judicial Conference of the United States, prepared statement 4

Bayly, John H., Jr., president, Legal Services Corporation 257
    Letter from 271
Boyd, Thomas M., Acting Assistant Attorney General, Department of Justice, letters from 454, 460, 492, 499
Brown, Mark E., Director, Budget Office, Department of Commerce 117
Bulow, Kay, Assistant Secretary for Administration, Department of Commerce, letter from 147

Cohen, Hon. William S., U.S. Senator from Maine, letter from 160
Cook, Charles W., Deputy Assistant Secretary, Space Plans and Policy, Department of the Air Force, letter from 149
Curtin, John J., Jr., American Bar Association 395
    Prepared statement 402

de Schweinitz, Clark, executive director, Northern New Mexico Legal Services, Inc., letter from 239
Durant, William Clark, III, Chairman, Legal Services Corporation 257
    Prepared statement 335

Eaglin, Paul, board member, Legal Services Corporation 257
    Prepared statement 295
Evans, William E., Undersecretary-Designate for Oceans and Atmosphere, Department of Commerce 117
    Prepared statement 122

Friday, Dr. Elbert, Deputy Assistant, NWS 117

Godbold, John C., Director, Federal Judicial Center, prepared statement 51

Heising, Dewey, Chief of Financial Management Division, Administrative Office of the U.S. Courts 1
Hollings, Hon. Ernest F., U.S. Senator from South Carolina, letters from 455, 474, 476, 477

Lawn, John C., Administrator, Drug Enforcement Administration 711
    Prepared statement 712

Page

Markey, Howard T., Chief Judge, U.S. Court of Appeals for the Federal Curcuit, prepared statement---------------------------- 28
Mecham, L. Ralph, Director, Administrative Office of the U.S. Courts-- 1
  Prepared statement-- 59
Meese, Hon. Edwin, III, U.S. Attorney General------------------ 417
  Letter from-- 456, 475
  Prepared statement-- 425
Meskill, Hon. Thomas J., Judge, U.S. Court of Appeals for the Second District-- 1
Morris, Stanley E., U.S. Marshals Service--------------------- 731
  Letter from--- 479
  Prepared statement-- 732

National Conference of State Legislatures, letter from--------- 754
Nelson, Alan C., Commissioner, Immigration and Naturalization Service--- 575
  Prepared statement-- 576

O'Connor, Justice Sandra Day, Supreme Court of the United States, prepared statement-- 74

Peterson, Dr. Melvin, chief scientist, NOAA-------------------- 117
Pyke, Thomas, Assistant Administrator, NESDIS------------------ 117

Quinlan, J. Michael, Director, Bureau of Prisons--------------- 555
  Prepared statement-- 556

Re, Edward D., Chief Judge, U.S. Court of International Trade, prepared statement-- 30
Reid, Hon. Harry, U.S. Senator from Nevada, letter from--------- 157
Rosenthal, Albert J., Columbia University School of Law, letter from-- 325
Roth, Hon. William V. Jr., U.S. Senator from Delaware, letter from-- 159

Sessions, Hon. William S., Director, Federal Bureau of Investigations-- 601
  Letter from--- 478
  Prepared statement-- 604
Smegal, Thomas F., board member, Legal Services Corporation----- 257
  Prepared statement-- 307

Uddo, Basile, board member, Legal Services Corporation--------- 257

Verity, Hon. William, Secretary of Commerce, letter from-------- 152

Wallace, Michael B. board member, Legal Services Corporation---- 257
  Letter from--- 283
  Prepared statement-- 261
Weather Modification Research, letter from various Senators on-- 171
Weicker, Hon. Lowell P., Jr., U.S. Senator from Connecticut, prepared statement-- 132

Page

Weiker, Dr. Rodney, Comptroller, National Oceanic and Atmospheric Administration-- 117
Wilkins, William W., Jr., Chairman, U.S. Sentencing Commission, prepared statement-- 31

(iv)

SUBJECT INDEX

Department of Commerce

Page

Adherence to Report Language 135
American Fisheries Society, letter submitted by 161
Bryd, Honorable Robert C., U.S. Senator from West Virginia, questions submitted by 251
Budget Request, NOAA 117, 128, 136, 155
Bumpers, Honorable Dale, U.S. Senator from Arkansas, questions submitted by 225
Chiles, Honorable Lawton, U.S. Senator from Florida, questions submitted by 227
Consolidation of NOAA at Silver Spring Metro Center 155
Correspondence regarding Calfornia CZM funding 151
Federal/State Cooperative Program in Weather Modification 170
Hatfield, Honorable Mark O., U.S. Senator from Oregon, questions submitted by 247
Hollings, Honorable Ernest F., U.S. Senator from South Carolina, opening statement 117
Hollings, Honorable Ernest F., U.S. Senator from South Carolina. questions submitted by 173
LANDSAT Commercialization Program 121, 129, 143
Lautenberg, Honorable Frank R., U.S. Senator from New Jersey, questions submitted by 230
Marine Mammal Protection 153
National Environmental Satellite and Information Service 120
National Marine Fisheries Service 119, 154
National Oceanic and Atmospheric Administration 117
National Ocean Service 118, 134, 140
National Undersea Research Program 133
National Weather Service 120
NOAA Vacancies 154
Oceanic and Atmospheric Research 119
Polar Orbiting Satellites 142
Program Support 121
Reid, Honorable Harry, U.S. Senator from Nevada, letter submitted by 156
Roth, Honorable William V., U.S. Senator from Delaware, letter submitted by 158
Rudman, Warren B., U.S. Senator from New Hampshire, questions submitted by 236
Sea Grant Program 120
Specter, Honorable Arlen, U.S. Senator from Pennsylvania, questions submitted by 255
Stevens, Honorable Ted, U.S. Senator from Alaska, questions submitted by 240
Weicker, Honorable Lowell P., Jr., U.S. Senator from Connecticut, opening statement 132
Weicker, Honorable Lowell P., Jr., U.S. Senator from Connecticut, questions submitted by 241

Department of Justice

Administration Leadership in the War on Drugs 487, 501
Anti-Drug Abuse Act 419, 480
Apprehension of Fugitives 471, 473, 494

Asset Forfeiture Fund 422, 743
Budget Request 420
Budget Request, Anti-Drug 420, 485, 495
Bumpers, Honorable Dale, U.S. Senator from Arkansas, questions submitted by 569, 588
Certification of Mexican Efforts to Eliminate Drugs 489
Civil Rights Enforcement 482
Cocaine 496
Comprehensive Crime Control Act 419
Congressional & Administrative Anti-Drug Efforts 420
Criminal Justice System 418
DEA, Aircraft 481
DEA, Chemical & Precursor Legislation 711
DEA, Distribution of Agents 489, 500
Domenici, Honorable Pete V., U.S. Senator from New Mexico, questions submitted by 545
Drug Abuse by Social Class 487
Drug Abuse Treatment Programs 498
Drug Enforcement Administration 421, 480
Drug Enforcement Coordination 417
Drugs Crossing Southwest Border 502
Drug Related Crime 419
Drug Use by High School Students 419
Fairton, New Jersey Prison 500
FBI, Embassy Security 602
FBI, Library Awareness Program 601
FBI, Washington Field Office 469
Federal Bureau of Investigation 422, 601
Federal Prison System 423, 490, 555
Hollings, Honorable Ernest F., U.S. Senator from South Carolina, opening statement 417
Hollings, Honorable Ernest F., U.S. Senator from South Carolina, questions submitted by 510, 564, 585, 689, 719, 736
Illegal Alien Felons 505, 741
Immigration and Naturalization Service 575
Increased Penalties and Fines 500
Independent Counsel Investigation 448, 471
Information Technology 501
Inouye, Honorable Daniel K., U.S. Senator from Hawaii, questions submitted by 522
INS Leased Property 449
Intelligence Sharing 742
International Impact of Drug Problem 504
Judicial Security and Prisoner Transportation 421, 488
Law Enforcement Coordination 418
Litigation 422
Military Bases for Prison Facilities 743
Muslim Intervention in Drug Peddling 487
National Drug Policy Board 419
Operation Alliance 503
Organized Crime Drug Enforcement Task Forces 418
"Plastic Gun Bill" 490
Prison Overcrowding 423
Regional Information Sharing System 450, 744
Resignation of Top Officials 448, 507
Rewards for Information on Drug Traffickers 500
Rudman, Honorable Warren B., U.S. Senator from New Hampshire, questions submitted by 521, 529, 571, 594, 700, 726, 739
State and Local Assistance 508
Stewardship of the Attorney General 470
U.S. Attorneys 506
U.S. Marshals Service 422, 731
Weicker, Honorable Lowell P., Jr., U.S. Senator from Connecticut, questions submitted by 542, 573, 599

Judiciary

Page

Administrative Office of the U.S. Courts 1
Budget Request 1, 54
Bumpers, Honorable Dale, U.S. Senator from Arkansas, questions submitted 95
Hollings, Honorable Ernest F., U.S. Senator from South Carolina, opening remarks 1
Hollings, Honorable Ernest F., U.S. Senator from South Carolina, questions submitted by 78
Impact of Budget Reductions 55
Rudman, Honorable Warren B., U.S. Senator from New Hampshire, questions submitted by 101
Senior Level Staff 54
Sentencing Guidelines 56,58
Supreme Court of the United States 73

Legal Services Corporation

Access to Legal Assistance 395
Budget Request 285, 304, 332, 396
Client/Corporation Cpntract 294
Commemoration of Julian Pearson 258
Direct Delivery of Legal Services to Poor 332
FY 1988 Continuing Resolution Prohibitions 347
General Accounting Office (GAO) Report 344
Governing Board Regulations 259, 399
Hollings, Honorable Ernest F., U.S. Senator from South Carolina, opening statement 257
Hollings, Honorable Ernest F., U.S. Senator from South Carolina, questions submitted by 350
IOLTA Funds 294, 332, 341, 396
Lobbying Regulation 259, 342
Minority Budget 291, 303
Monitoring Issue 400
Native American Program 292
Northern New Mexico Legal Services, Inc. 287
Personal Services Contract 347
Reprogramming 346
Rudman, Honorable Warren B., U.S. Senator from New Hampshire, questions submitted 377
Sasser, Honorable Jim, U.S. Senator From Tennessee, closing remarks 415
Selection of Local Board Members 345
State and National Support Services 290, 345, 397
Training Programs 398
Volunteerism 292

—o—